

# PLAIN FACTS:

B E I N G

## AN EXAMINATION

INTO THE

RIGHTS of the INDIAN NATIONS of AMERICA,  
to their respective Countries;

A N D

## A VINDICATION of the GRANT,

F R O M

The SIX UNITED NATIONS of INDIANS,

T O

The PROPRIETORS of INDIANA,

A G A I N S T

## THE DECISION

O F T H E

LEGISLATURE of VIRGINIA;

TOGETHER WITH

AUTHENTIC DOCUMENTS,

P R O V I N G

That the TERRITORY, Westward of the Allegany  
Mountain, never belonged to VIRGINIA, &c.

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## PLAIN FACTS, &c.

THE year succeeding that, in which America was first discovered, Pope Alexander the Sixth, by his bulls, dated 2d and 3d of May, 1493, munificently gave the whole of that vast Continent,\* of which but a small part was then known in Europe, to Ferdinand and Isabella of Spain; following the example of one of his predecessors, who, in 1440, had granted Africa to king Alphonso the Fifth, of Portugal; not because that Continent was uninhabited, but because the nations subsisting there were *infidels*, and consequently *unjust possessors* of the country where their Creator had formed and placed them.†

The disposing power which had been in these instances assumed by Saint Peter's pretended successors, over the countries of unchristian nations, was, however, too glaringly absurd to be regarded by Popish princes themselves, even in that superstitious age;‡ and several of them in defiance of these papal grants, soon after, undertook discoveries and settlements in Africa and America, and particularly Henry the Seventh of England, who was a zealous Roman Catholic, and who,

within

\* A former *infallible Pope* had declared that no such Continent as America did or could exist, and had denounced excommunication against all who should believe the contrary opinion.

† "Thus the *Romish Pontiffs* did not scruple to break the rules of common justice and equity, to serve the purposes of their own worldly interest and glory. They debroned princes, dispossessed whole nations of their rightful inhabitants, transferred the properties of one people to another, turned out those, whom God and nature put in possession, for their own votaries." History of peopling several parts of the world, and particularly of America. By John Harris, A. M. F. R. S.

‡ We are told by Herrera, that Ferdinand and Isabella accepted the papal grant in question from some particular reasons, contrary to the advice

within three years after, viz. in 1496, granted John Cabot and his three sons, with their associates, a commission to navigate all parts of the ocean, in five ships, under the banners of England, for the purpose of discovering ("ad inveniendum suis eorum propriis sumptibus et expensis," &c.) such *heathen or infidel* ("gentilium et infidelium," &c.) regions, countries or islands, *wherever situated*, as were unknown to Christian states; with power to set up the king's standard in any lands, islands, &c. which they might discover, *not previously occupied by Christians*, and to seize, conquer, and possess all such lands, islands, &c. and as his liege vassals, governors, locumtenentes or deputies, to hold dominion over, and have exclusive property in the same.

Under this commission (which could convey no territorial property, as none had been then acquired) the Cabots discovered Newfoundland, with some other parts of the coast of North America, and thereby gave the crown of England all the rights which could result from the discovery of countries, then inhabited and shared by large nations or tribes of mankind; which however could at most be no other than the privilege of forming establishments in these countries, with the consent of the native proprietors, in preference to the subjects of any other state; for, "No man" says Sidney,

vice of the Spanish civilians and canon lawyers; and we find Bartholemew Delas Casas, Bishop of Chiapa, in a Treatise written and dedicated to the Emperor Charles the Fifth, represented, "That the natives (of America) having their own lawful kings and princes, and a right to make laws for the good government of their respective dominions, could not be expelled out of them, or deprived of what they possess, without doing violence to the laws of God, as well as the law of nations." State Facts, v. 3, "An empire" says the illustrious Sidney, "founded upon the donation of the Pope, which, amongst those of the Romish religion, is of great importance, and the entire conquest of a people, with whom there had been NO FORMER CONTRACT, do degenerate into a most unjust and detestable tyranny. What then shall we say of those, who pretend to a right of dominion over free nations?"

Sidney, "can give what he has not. Whoever there-  
fore will pretend, that the King has bestowed this  
("landed) property, must prove, that he, first, had  
it himself. I confess, that the Kings of Spain and  
Portugal obtained from the Pope, grants of the ter-  
ritories they possess in the West Indies; and that  
this might be of some strength, if the Pope, as Vicar  
of Christ, had an absolute dominion over the whole  
earth; but if that fail, the whole falls to the ground,  
and he was ridiculously liberal of that, which no  
ways belonged to him." Patents however for pro-  
moting discoveries and settlements in America were  
afterwards granted by queen Elizabeth, and king  
James and his successors, who all denied the Pope's  
authority over countries, on account of their being  
inhabited by infidels; yet, as some pretence was ne-  
cessary to justify these usurpations, they, after the  
example of king Henry the Seventh, adopted the  
exploded distinction between the rights of Chris-  
tians and those of Infidels, and made it the only  
foundation of their respective American grants; all  
of which contained this, and only this provision, that  
the territories and districts so granted, be not previously  
occupied and possessed by the subjects of any other Chris-  
tian prince or state." But if the princes and people  
of Europe, in more ignorant and superstitious ages,  
were so far misled by the emotions of avarice, ambition,  
or religious pride, as to believe it justifiable for  
them to cross the Atlantic, and usurp the possessions  
of unoffending nations, only because they did not be-  
lieve in religious doctrines, of which they had never  
heard, yet the pervading liberal influence of philoso-  
phy, reason, and truth, has since given us better no-  
tions of the rights of mankind, as well as of the obli-  
gations of morality and justice; which certainly are  
not

not confined to particular modes of *faith*, but extend universally to Jews and Gentiles, to Christians and Infidels. And, indeed, the injustice of these attempts to usurp the aboriginal possessions of so many of our fellow creatures, from a defect in their religious opinions, was so manifest, that they never could have been suggested by any other than the detestable policy, and unchristian ambition, which for many ages governed the measures of the *Papal See*.

“ Avides ravisseurs des richesses des autres:

“ Ils quittent leur pais, pour innonder les nôtres.”

RACINE.

The Divine Author of our holy religion, when on earth, assumed no temporal dominion or property, but submitted himself on every occasion, even when criminally arraigned, to the jurisdiction and authority of Infidel magistrates, declaring that his kingdom was not of this world; and surely none of his disciples can justly arrogate to themselves powers which their great Master has disclaimed, nor pretend, that he has any where authorized them to expect earthly dominion or riches as the rewards of piety and virtue; much less can they plead his permission to acquire them by injustice and violence.

The great universal Parent of mankind, when he gave existence to the native inhabitants of America, commanded them, by the first immutable law of nature to preserve that existence; and that they might be enabled to do it, he must have given them an indefeasible right to enjoy the countries where his providence had placed them; humbly awaiting that progress of events, by which in due time they would probably have advanced, as our progenitors have done, from the rude ignorance of a state of nature, to the splendid acquirements of civilization.

All

All the nations of Europe, and indeed of the world, have been as unchristian and as savage as the aborigines in America ; \* and if ignorance either in matters of religion or science, could defeat the title of a people to their country, the *English* must be unjust possessors of the British soil, and incapable of conveying it to their posterity.-----The right of territory in a community is, however, founded on the great natural law of self-preservation, and arises neither from the perfection of our religious opinions, nor from our progress in the refinements of civilization; being antecedent to all these adventitious circumstances. Let it be, says Lord Bolingbroke, “ That the *Aborigines*, the “ *Getulians*, the *Lybians*, and the inhabitants of the “ inward parts of *Africa* had neither *written laws*, “ nor civil magistrates, will it follow, that they had no

“ customs,

\* “ The Grecians derive their own origin from unsettled tribes, whose frequent migrations are a proof of the rude and infant state of their communities. The Gauls and Germans are come to our knowledge with the marks of a similar condition; and the inhabitants of *Britain*, at the time of the first Roman invasions, resembled in many things the present natives of North America. They were ignorant of agriculture, they painted their bodies, and used for cloathing the skins of beasts.” Ferguson’s Hist. of Civil Society.

Ferdinand, King of Spain, in the year 1509, established two governments upon the continent of America. One extending from Cape de Vela to the Gulph of Darien, and the other from thence to Cape Gracias a Dios. The former was given by patent to Alonso de Ojeda; the latter to Diego de Nicuesa. The celebrated Dr. Robertson remarks, in his History of America, vol. I, “ That in order to give their title to those countries “ *some appearance of validity*, several of the most eminent divines and “ lawyers in Spain, were employed to prescribe the mode in which they “ should take possession of them. They instructed *those invaders*, as soon “ as they landed on the continent, to declare to the natives the principal “ articles of the christian faith; to acquaint them in particular “ with the supreme jurisdiction of the *Pope* over all the kingdoms of the “ earth; to inform them of the grant which this Holy Pountiff had made “ of *their country*, to the King of Spain, &c. As the inhabitants of the “ continent could not at once yield assent to doctrines too refined for “ their uncultivated understandings, and explained to them by interpreters imperfectly acquainted with their language, they did not conceive how a *foreign priest* (the Pope) of whom they had never heard, could have any right to dispose of their country; or how an unknown prince should claim jurisdiction over them, as his subjects;—they, therefore, fiercely opposed the new invaders of their territories.”

" customs, which were among them, equivalent to laws; " no Fathers, no Elders, that supplied the place of civil " magistrates; no forms of government, because they " had not those of civil government."\* The produce of the earth is necessary to subsist its inhabitants; and if the Creator of mankind had made it justifiable for Christians to deprive unbelieving nations of their native countries, we must, from his acknowledged attributes presume, that he would have so formed the latter, as to enable them *to subsist without food*. But as he has made no difference between the natural wants and faculties of Christians and those of Infidels, we may safely affirm, that whatever spiritual advantages are allotted to the former, our common Parent has made no distinction between the temporal rights of his creatures; and indeed all *distinctions* of this nature have been either overlooked or rejected by every approved writer on the *laws of nature* or of *nations*; and Mr. Hume pertinently observes, " That all the laws of nature, " which regulate property, as well as all civil laws, " are general, and regard alone some essential cir- " cumstances of the case, without taking into consi- " deration the characters, situations and connections of " the persons concerned. Public utility requires, that " property should be regulated, not by partial, but by " general, inflexible rules." These distinctions can have no foundation in the *civil law*, which was instituted before Christianity: And they are by no means even justifiable on the principles of jurisprudence.† Nothing more can therefore be necessary to reprobate a claim,

which

\* Bolingbroke's Philosophical Works, Vol. 4.

† At an important trial of Campbell against Hall, in the court of King's Bench, England respecting the duty of four and an half per cent. imposed in the Island of Grenada by royal prerogative, this opinion, that Christians have a right to Heathen countries being casually mentioned, was ridiculed by Lord Mansfield, and the other judges, as well as by all the council present.

which is not only unsupported by any divine or human authority, but is in itself most unreasonable, unjust, and cruel. It may not be improper, however, to subjoin the following extract from an *opinion* jointly given by Lord Chancellor *Camden* and the late Mr. *Yorke* (afterwards Lord Chancellor *Morden*) respecting the right of the *Heathen Asiatic* States to their respective territories. In 1757, the East India Company of London petitioned the King, that in a new charter which was then soliciting, a clause might be inserted, for enabling them to hold and enjoy, subject to the King's right of sovereignty, all such districts and territories as they had acquired, or might hereafter acquire, (in Asia) from any nation, state, or people, by treaty, grant, or conquest: upon which these respectable lawyers (being then the King of England's Attorney and Solicitor General) officially advised him, "that in respect to such territories as have been, or shall be acquired by *treaty* "or grant from the Great Mogul, or any of the Indian "princes or governments, your Majesty's letters patent "are not necessary; the property of the soil vesting in the "Company by the Indian grant subject only to your Ma- "jesties right of sovereignty over the settlements, as "English settlements, and over the inhabitants, as En- "glish subjects, who carry with them your Majesties "laws wherever they form colonies, and receive your "Majesties protection by virtue of your royal char- "ters."-----This most respectable opinion in favour of the absolute right of *Heathen Asiatics* to their several territories, applies directly to support the same right, as vested in *Heathen Americans*; for if the title of the latter were defective on account of their infidelity, the same cause must destroy the right of the people of Hindostan, China, and every other Infidel nation, to the countries they inhabit.

Having thus sufficiently refuted the pretence on which the Pope, and several European princes, assumed a power of granting away the soil of America, and having thereby vindicated the title of the aborigines of that Continent from all impeachment, on account of their ignorance of Christianity, let us next examine how far their right to the countries inhabited by them, is in other respects valid, according to the *laws of nature* and of *nations*.

America, at its first discovery, was found to be inhabited and possessed by numerous tribes or nations of people, who had divided that Continent between themselves, allotting to each its known and determinate share: how long these people had thus occupied their respective districts, is altogether unknown; this however is certain, that no knowledge remains of the time or manner of their introduction, and whatever might have been their origin, they undoubtedly were the original and first occupants and possessors of the country, and consequently must have had the best and most unexceptionable title to it; as none else could possibly have a claim prior to their own. In this state then, no European prince could derive a title to the soil of America from *discovery*,\* because that (as all civilians, &c. agree) can give a right only to lands and things, which have either never been owned and possessed,

\* " It is universally acknowledged, that *discovery*, the only title that any European state could alledge to the lands of America, affords no just claim to any but *derelict*, or *uninhabited* lands, which those of America are not. It has indeed been suggested by papal ingenuity in superstitious ages, that *grace* was the only just foundation of dominion;—the *christians* alone had a right to inherit the earth, and that unbelieving nations ought to be regarded as unjust possessors of the country, where God had placed them; and such were the pretences on which Pope Eugene the Fourth, in 1440, granted *Africa* to *Alfonso*, King of Portugal; and on the same pretence, Pope Alexander the Sixth, and several European princes afterwards, disposed of the countries of America: but all distinctions between the temporal rights of *christian* and *infidel* nations have long since been exploded." Griffith, vol. 10.

possessed, or which, after having been owned and possessed, were voluntarily *deserted* by the owner, as not worth the trouble of keeping; and so clearly were the *English* commissioners of this opinion, that they observed to the *French* commissioners at Paris, the 15th of November, 1751, relative to the island of *Saint Lucea*, “ That there can be no *absolute dereliction* of any country, but where the *last* possessor leaves it voluntarily, and without any apparent necessity; that to make such dereliction in *one* people a foundation of right *in any other* coming after them, it is necessary that the acquiescence of the *first* power, under the possession of the latter, must have been an acquiescence intended *voluntarily*, and clearly manifested; and that neither a desertion forced upon any people by an enemy, nor a temporary acquiescence under that expulsion occasioned by necessity, *do extinguish* the right of any people to the country they so abandon.” Property, however, when found in these circumstances, without an owner, may be appropriated and possessed by the first finder, who thus renders it his own property by *occupancy*.--- “ *Quod enim est nullius per occupationem acquiritur ejus dominium;*” et “ *quod quisque occupasset, id proprium haberet.*”\* *Primus acquirandi modus, qui juris gentium a Romanis dicitur, est occupatio eorum, que nullius sunt.* Grotius, lib. 2, ch. 2. Idem, l. 1, and Puffendorf, lib. 4, ch. 6, sect. 12. Cicero also observes, “ *Quod cuique obtinet, id quisque teneat.*”--- But as the Continent of America was neither *derelict* nor *uninhabited*, we may safely conclude, that the first European emigrants to America had no right to establish

\* Puffend. de Jur. Nat. & Gent. lib. IV. cap. 7.

blish themselves there,\* without the consent of the native proprietors,† and that the several grants of American territory, which they received from their respective sovereigns, could afford only nominal sanctions for these undertakings. The ingenious Mr. Dummer, in his defence of the New England charters, maintains, that the crown neither did nor could grant the soil of America, having in itself no right thereto. The first English settlement having been there by a patent from queen Elizabeth to Sir Walter Raleigh, he asks “ if “ she had any right, what was it, and from whence “ derived, It was not” adds he, “ a right of inheritance, because those countries did not descend to “ her from her ancestors;---not of conquest, because “ she neither conquered, nor attempted to conquer “ them; besides, it would be hard to conceive how a  
“ conquest

\* Judge Blackstone, speaking of the right of migration, or of sending colonies to find out new habitations, when the mother country was overcharged with inhabitants, says, “ so long as it was confined to the stocking and cultivation of *desert uninhabited countries*, it kept strictly within the limits of the law of nature. But (continues he) how far the feizing on countries already peopled, and driving out the innocent and defenceless natives, merely because they differed from their invaders in language, in religion, in customs, in government, or in colour; how far such conduct was consonant to nature, to reason, or to Christianity, deserved well to be considered by those who have rendered their names immortal by thus civilizing mankind.”

† L'Abbé Reynst, the ingenious author of the History of the settlements of the Europeans in the East and West-Indies, remarks, “ That Riebeck, the Founder of the Dutch Colony at the Cape of Good Hope, in conformity to the notions then unhappily prevailing among the Europeans, began to take possession of the most commodious part of the territory of the Hottentots, and he afterwards designed to fix himself there. This behaviour (the Abbe observes) displeased the natives.— On what pretence, said their Envoy to these strangers, have you sown our lands? Why do you employ them to feed your cattle? How would you behave, if you saw your own fields invaded in this manner? You fortify yourselves with no other view than to reduce the Hottentots to slavery. These remonstrances (continues our author) were followed by some hostilities, which brought the founder of the colony back to those principles of justice and humanity, that were agreeable to his natural character. He purchased the country he wanted to occupy for the sum of 90,000 livres (£ 3937: 10 sterling) which was paid in merchandize. All parties were reconciled, and from that time to this, there has been no farther disturbance.”

" conquest, where there was no preceding injury or  
 " provocation, could create a right: \* ----nor did it  
 " arise by purchase, no money or other valuable con-  
 " sideration having been paid: nor could she claim by  
 " prior discovery, or preoccupancy, because *they give a*  
 " *right only to uninhabited lands,* † which these were  
 " not, being full of inhabitants, who undoubtedly had  
 " as good a right to their own country, as the Euro-  
 " peans had to theirs. And sure no body will say,  
 " in plain terms, that we have any claim upon the  
 " foot that we are Christians, and they are Heathens. ‡  
 " Rome itself (continues he) imperious as she is, never  
 " carried her pretences to this height; for though  
 " some of her doctors have taught, absurdly enough,  
 " that *dominion* is founded in grace, none of them have

" said

\* See Burlemaqui, vol. 2.

† The following authoritative facts establish and confirm this doctrine.

On the 27th of April, 1610, King James the First granted by charter Newfoundland to the Earl of Northampton and others; and as the grounds for such grant, it is declared in the said charter, " That being assured  
 " the country adjoining to which, where our subjects have been used to  
 " fish, remaineth so desitute and desolate of inhabitants, that scarce any one  
 " savage person hath in many years been seen in most parts thereof, and  
 " well knowing, that the same lying and being so vacant, is as well for the  
 " reasons aforesaid, as for many other reas ons, very commodious for us,  
 " and our dominions; and that by the law of nature and nations, we may of  
 " our royal authority possess ourselves, and make grant thereof, without  
 " doing wrong to any other prince or state, considering they cannot justly  
 " pretend any sovereignty or right thereunto, in respect that the same re-  
 " maineth so vacant, and not actually possessed and inhabited by any christian,  
 " OR OTHER WHATSOEVER."

In 1629, " Divers of the English nation finding the islands of *Cateline*  
 " and *Tortuga* unpossessed and empty of inhabitants, did thereupon seize,  
 " and begin to plant colonies on them, giving to the former the name of  
 " the island of *Providence*, and to the latter the name of the island of  
 " *Association*; and which they continuing to inhabit and occupy, after  
 " the establishment of peace between his Britannic Majesty and the *Catholic*  
 " King, anno 1630, the *Spaniards* became therat offended, and therefore  
 " complained thereof to King Charles the First, by their *Ambassador*, who  
 " who gave in answer to the said complaint, that his subjects having found  
 " those islands, both unpossessed by the *Spaniards*, and uninhabited by any  
 " other people WHATSOEVER, had thereupon, by the laws of nature, as  
 " well as of nations, a liberty and right to sit down and plant there." —  
 Defence of the Scots Settlement at Darien, &c. in 1699, p. 69, 60.

† See Puffendorf, page 98.

" said that *property* is. There remains then, (he adds) *no other right.*\* but what is derived from the native lords of the soil, and that is what the first New England planters relied on, having purchased it, &c."

The several nations or tribes of America, having been 'till then unknown to all other princes or states could not possibly have owed either subjection or allegiance to any earthly power and consequently must have been independent communities, and as such, must have been capable of acquiring territories, and other kind of property, in the same manner, and by the same means as other communities make the like acquisitions. The most common and effectual means, by which a nation and people may acquire the property of a country is *original or primitive occupancy.* " A nation says " Dr. Rutherford.† by settling upon any tract of " land, which at the time of such settlement had no " other owner, acquires, in respect of all other na- " tions, an exclusive right of full or absolute proper- " ty, not only in the land, but in the waters likewise

" that

\* The patriotic and learned Dr. Price, in answer to such courtly writers as asserted " The land, on which the Americans had settled, was *ours*"--asks, " But how came it *ours?* If sailing along a coast can give a right to a country, then might the people of Japan become, as soon as they please, the proprietors of Britain. Nothing can be more chimerical than property founded on such a reason. If the land on which the colonies first settled, had any proprietors, they were the natives; the greatest part of which they (the colonists) bought of the natives." Observations on the Nature of Civil Liberty, &c. London, 1776.

" Although Spain, by an imaginary title or gift from the Pope, had laid a formal claim to the whole of America, yet every other nation that pleased, took the liberty to occupy and possess in their own right, such vacant and uninhabited lands in America, as they happened from time to time to discover by their own industry, and at their own expense, establishing their respective titles in conquest, in lawful war, treaty, purchase, or some kind of amicable agreement with the natives, which to do the English nation justice, has been the only foundation of their equitable and solid claim to all the possessions, which they hold at this time in America." History of the British Plantations in America. Part the 1st, by Sir William Keith, Baronet, London, 1738.

† Institutes of Natural Law, B. II. cap. 9.

" that are included within the land, such as rivers  
 " pools, creeks, or bays. This absolute property of  
 " a nation, in what it has thus seized upon, is its right  
 " of territory." " Occupancy, (adds he) in the  
 " gross, gave the nation, from the first, a right of  
 " absolute property in the land where it settled. But  
 " a subsequent distribution and assignment, or a sub-  
 " sequent occupancy in parcels, gives the several mem-  
 " bers of the nation private property in their respec-  
 " tive shares."

Judge *Blackstone* also says that "as occupancy gave  
 " the right to the temporary use of the soil, so it is  
 " agreed upon all hands, that occupancy gave also the  
 " original right to the permanent property, in the  
 " substance of the earth itself, which excludes every  
 " one else but the owner, from the use of it. There  
 " is, indeed, (observes he) some difference among the  
 " writers on natural law, concerning the reason *why*  
 " occupancy should convey this right, and invest one  
 " with this absolute property; *Grotius* and *Puffendorf*\*  
 " insisting, that this right of occupancy is founded  
 " upon a tacit and implied assent of all mankind, that  
 " the first occupant should become the owner. And  
 " *Barbeyrac*, *Titian*, *Mr. Locke*, and others, holding  
 " there is no such implied assent; neither is it neces-  
 " sary that there should be, for that the very act of  
 " occupancy alone, being a degree of bodily labour,  
 " is from a principle of natural justice, without any  
 " consent

\* " After men came to a resolution of quitting the primitive commun-  
 " ion, upon the strength of a previous contract, they assigned to each  
 " person his share out of the general stock, either by the authority of  
 " parents, or by universal consent, or by lot, or sometimes by the free  
 " choice of the party receiving. Now it was at the same time agreed,  
 " that whatever did not come under this grand division, should pafs to  
 " the first occupant, that is, to him who, before others, took bodily  
 " possession of it, with intention to keep it as his own."

These are the words of *Puffendorf*, who concludes with *Grotius*, that  
 whereas originary acquisition was at first made by division, " it can be  
 " now made only by occupancy."

" consent or compact, sufficient of itself to gain a title.  
 " A dispute (continues he) that favours too much of  
 " nice and scholastic refinement; however both sides  
 " agree in this, that *occupancy* is the thing by which  
 " the title was in fact originally gained: every man  
 " saving to his own continued use such spots of ground  
 " as he found most agreeable to his own convenience,  
 " provided he found them *unoccupied* by any one else." And of this opinion was *Woolaston*, who says, " That  
 " the first possession of a thing gives the possessor a  
 " greater right to it, than any other man has, or can  
 " have, 'tll he and all that claim under him, *are extinct*. To say *prime occupancy* gives no right, is  
 " inconsistent with the peace and happiness of mankind  
 " in general."\*

These authorities (though abundance of others might be cited) will sufficiently prove, that *occupancy* has been universally admitted, as sufficient to vest the property of a country, or district in a nation, or tribe occupying the same; and consequently, that the aborigines of America have an absolute exclusive right to the countries they possess;--they, by the immemorial, uninterrupted exercise of every act, which is necessary to constitute *occupancy*, either by the laws of nature, or of nations, must have acquired a valid title to their territories, if even the possession had been at first unjustly gained. But surely this was not the case; for whether we consider them as having been, by divine providence, first transplanted to America, or as having been (according to their own belief) *created there*,† yet, in either case, their possession must have been obtained without those crimes, or that injustice, on which

\* See *Woolaston's Religion of Nature*.

† " For we must tell you, that long before one hundred years, our ancestors came out of this very ground, and their children have remained here ever since." *Speech of the six nations at the treaty of Lancaster.*

which European titles are frequently founded:----for it must have been given by the hand of that BEING, *who created the world, and is the most rightful disposer of it.* And notwithstanding the princes of Europe arrogantly assumed the dominion and property of America, still the right of the Indian natives has been so evident, and the *injustice* of taking it from them has been so sensibly felt, that most of the sovereigns of Europe have been *compelled*, by the force of truth and justice, to acknowledge the Indian tribes or nations to be *independent communities*; and to recognize their *right* to the several countries inhabited by them, but also to *purchase under that right*.

In 1662 King Charles the Second granted the charter of *Rhode Island*, &c. and therein is recited, that,  
 " They the said John Clerk, Benjamin Arnold, &c.  
 " and the rest of the *purchasers* and inhabitants of  
 " our island, called *Rhode Island*, and the rest of the  
 " colony of *Providence* plantations, did transplant  
 " themselves into the midst of the *Indian nations*, who,  
 " as we are informed, are the *most potent princes* and  
 " *people* of all that country, where, by the good pro-  
 " vidence of God upon their labour and industry,  
 " they have not only been preserved to admiration,  
 " but have increased and prospered, and are seized and  
 " possessed, by *purchase and consent* of the said natives,  
 " to their full content, of such lands, rivers, harbours  
 " and roads, as are very convenient both for planta-  
 " tions, and building ships," &c. And in 1663, the  
 following circular letter was transmitted by the King's  
 command, June the 21st, 1663, to the Governor and  
*Associates of the Massachusetts, Plymouth, New Haven,*  
*and Connecticut colonies.*

C

Charles

*Charles R.*

TRUSTY and well beloved, We greet you well.  
*WHEREAS*, We have been given to understand, that our good subjects, Thomas Chiffinch, John Scott, John Winthrop, Daniel Dennison, Simon Bradstreet, Thomas Miller, Richard Smith, Edward Hutchinson, Amos Richardson, John Alcock, William Hudson, and their Associates, having, in the right of Major Asherton, *a just propriety in the Narraganset country in New England, by grants from the native princes of that country, and being desirous to improve it into an English colony and plantation, to the enlarging of our empire, and the common good of our subjects, they are yet daily disturbed, and unjustly molested in their possession and laudable endeavours*, by certain unreasonable and turbulent spirits of Providence colony, of New England aforesaid, to the great scandal of justice and government, and the imminent discouragement of that hopeful plantation.

We have therefore thought fit hereby effectually to recommend the *said proprietors* to your neighbourly kindness and protection; *the proprietors* to be permitted peaceably to improve *their colony and plantation*, in New England, willing you, *on all occasions to be assisting to them*, against such unjust oppressions and molestations, *that so they may be secured in the full and peaceable enjoyment of THEIR SAID COUNTRY*, according to the right and title they have to it, wherein we will not doubt of your readiness and care, and shall, on all good occasions, express how graciously we accept of your compliance with our recommendation; and if we bid you farewell.

Given at our Court at Whitehall, the 21st day of June, 1663,  
 in the 15th year of our reign.

By his Majesty's command,

HENRY BENNET.

*Minutes of Council,—Whitehall.*

King Charles the Second also granted a charter of incorporation to Lord Willoughby of Parham, for the colony of Surinam, and therein, in the most explicit manner, acknowledged the original right of the Indians to the same. The charter mentions "the lawful possession, and title of him the said Lord Willoughby and his heirs, of, in, and to the aforesaid part of the main land within the rivers and limits aforesaid, so acquired by, and contracted for with the native owners, and inhabitants thereof," and declares, that the said colony "ought to be encouraged and provided of good and necessary laws for the orderly government thereof, that so, not only the trade, but also the dominion of this our kingdom may be thereby much augmented and increased," and that for the purpose "of ratifying and confirming, AS MUCH AS IN US LIES, THE JUST AND LAWFUL title and right of him the said Lord Willoughby, and his heirs and assigns, of and into the same, in as ample a manner as hath at any time heretofore been granted to any person or persons, owner or owners, proprietor or proprietors, lord or lords of any other plantation in America.

" We do therefore," &c.\*

Soon after the English had established themselves in America, the Dutch made settlements at New York, and at the mouth of the river Delaware, and also at the entrance of Connecticut river; and at each of these settlements, they purchased the soil of its native Indian inhabitants:† they, however, deserted the two last settlements, but extended that of New York. The Dutch had not long abandoned the river Delaware, before a number of Swedes and Finns, encouraged by

Gustavus

\* Recorded in the Rolls Chapel,---Chancery Lane, London.  
† See Smith's History of New York.

*Gustavus Adolphus*, transported and established themselves there, and " purchased of the Indians the lands from Cape *Inlopen* to the Falls of *Delaware*, on both sides of the river, which they called New *Swedeland Stream*, and made presents to the Indian chiefs to obtain peaceable possession of the land so purchased."\* The Dutch notwithstanding asserted their pretensions to the country, (having previously established themselves on a part of it within the Capes of *Delaware*) and grounded their claim on a purchase, which they had made, July 19, 1651, from the Indian owners of all the lands " beginning at the west side of the *Muniqua* or *Christiana Kill*, in the Indian Language named *Suspecough*, and extending to the mouth of the bay or river called *Boompt Hook*, in the Indian language *Cannareffe*, and so far inland as the bounds and limits of the *Muniquas* land, with all the streams, appurtenances and dependencies thereof."†—And the Court of *Sweden* apprehended also, that no legal or just title could be acquired for lands in America, except by grant or cession from the native proprietors thereof; and therefore that Court, in 1656, presented the following Memorial to their High Mightinesses the States General of Holland.—

" THE underwritten Resident of *Sweden* doth find himself obliged, by express order, to declare unto their High and Mighty Lordships herewith, that the commissioners of the West India company in this country in the *New Netherlands*, now, the last summer, did unexpectedly assault, by force of arms, the Swedish colony there; taking from them their forts, and drove away the inhabitants, and wholly dispossessed " the

\* Smith's History of New Jersey.

† Smith's History of New York, and the Assembly of Pennsylvania in 1682, declared " this land to have been possessed by the Dutch, and bought by them of the natives."

" the Swedish company of their district;---it is true  
" and without dispute."

(The Resident further observed) "That the Swedish com-  
" pany did acquire, OPTIMO TITULO JURIS, that part  
" which they possessed, and did buy it of the natives,  
" and consequently have had possession of it for seve-  
" ral years; and WITHOUT THAT (purchase) the  
" West India company of these countries did never pre-  
" tend to any thing. Wherefore the said Resident  
" doth not doubt but these hostilities will very much  
" displease their High and Mighty Lordships; and  
" doth desire, in the name of his most gracious King  
" and Lord (of Sweden) that their High and Mighty  
" Lordships would be pleased to take some speedy  
" order for the redressing of such unlawful proceed-  
" ings,---as the justice, the mutual amity between  
" both nations, and the consequence of the busines  
" require, and is expected from their High Wisdoms,  
" whereby the Swedish company may be restored un-  
" deminified. Done at the Hague the 22d March, 1656.  
" [N. S.] Signed, H. Appleboom."\*

In 1664, Colonel Nichols, Sir Robert Carre, and two other British commissioners, with a small fleet and army, reduced all the Dutch possessions in that part of America, to the dominion of the crown of England, and when these forces were before the city of New Amsterdam (since New York) and had summoned the Governor and Magistrates to surrender to the King, they answered, that they "had purchased the land of the na-  
" tives, princes of the country, and had continued in  
" the uninterrupted possession thereof, and that they  
" made no doubt, that if his Majesty of Great Britain  
" were truly informed of these facts, he was too ju-  
" dicious to give any order, that the places and for-  
" tresses in their hands should be given up," &c.

After

\* Thurloe's State Papers, vol. 5.

After the Dutch settlements in this part of America were reduced, Colonel Richard Nichols, Sir Robert Carre, George Cartwright, and Samuel Maverick, Esqrs. set out, agreeable to a special commission from King *Charles the Second*, to visit the several New England colonies, and enquire into particular abuses which had been complained of, in the administration of justice and of government in these colonies: and the instructions which they received from the King, respecting the objects of their visit, afford another proof, that he considered the *Indian nations of America as independent states*, intitled to the general benefits of property, and of justice:—Part of these instructions were as follow, viz.

“ You shall inform yourselves of the state of the neighbouring *Indian princes*, and enquire what treaties have been made between them and any of the King’s subjects; and if there has been any failure on the part of any of his Majesty’s subjects, you shall take effectual course, that *reparation and satisfaction* be made for any injury sustained thereby; and shall use all ways and means to let those *princes*, and other Indians, know of his Majesty’s charge in their behalf.”\*

In the year 1684, the Lord *Howard* of Effingham, then Governor of *Virginia*, went with two of his Counsel from thence to *Albany*, to conclude a treaty with the *Six Nations*; and on the 13th of July, in the presence of the Governor of *New York*, and the magistrates of *Albany*, he addressed a speech to them, containing proposals for a future alliance and friendship, which were formally accepted and ratified. And here it is proper to observe, that the *Six Nations* had been frequently at war with the French, and were considered

\* Hutch. Hist. Massachuset’s Bay, vol. I.

as a most important barrier to our frontier American settlements; and it therefore became expedient not only *to perpetuate their union* with the English Colonies, but also to prevent the losses of strength and of numbers, which they daily suffered from the hostilities of the French and their Indian allies, whilst the crowns of England and France were at peace. For this purpose Colonel Dungan, then Governor of New York, strongly advised and solicited them *to put their country under the King's protection*, as an expedient that would preserve them from the attacks of the French, who were then endeavouring totally to extirpate them, chiefly on account of their former fidelity to the English: this the Indians consented to do, expecting thereby to acquire a new security, without losing either their property or *independency*;\* and instruments were at two subsequent treaties executed for submitting their lands to the crown of England, “*to be protected and defended by his Majesty, his heirs and successors for ever, to and for the use of them* (the said Indians) *their heirs and successors;*”† by which the public faith was solemnly plighted to guaranty, and maintain these nations in

the

\* This will appear by the following extract from the speech which the Onondagas and Cayugas, upon that occasion, addressed to the two Governors, viz. “We have put our lands and ourselves *under the protection* “of the great Duke of York, the brother of *your* great Sachem, who is “likewise a great Sachem. We have annexed the Susquehannah River, “which we won with the sword, to this Government (New York)—we “will not, that any of the great Penn's people settle there, for we have “no other land to leave our children.—Let your friend that lives on the “other side of the great lake, know this, that we being *a free people*, “though united to the English, may give our lands, and be joined to the Sachem “we like best.” Colden's Hist.

† In the year 1684, when the Indians *were persuaded to put their lands under the protection of the crown of England*, the governor of New York, says Mr. Colden, “gave them the Duke's arms to be put up at each of “their castles, in hopes it might deter the French from attacking them “(as they were threatened from Canada) by this so manifest a declaration “of their being under the protection of the crown of England, when “the two crowns were in the strictest friendship; but (continues he) it “is probable the French chose this very time to attack them, to bring “them off from that confidence they seemed to have in the English.”

the full enjoyment of their freedom and property; though these very instruments were afterwards perverted to justify a claim of dominion over them: for at the treaty of *Utrecht*, when the power of France had been depressed by the duke of Marlborough's and other victories, the following article was exacted of the French, who had till then always asserted the absolute independency of the Six Nations, viz. "The subjects of France, inhabiting Canada and others, shall hereafter give no hindrance or molestation to the Five Nations, or Cantons of Indians, subject to the dominion of Great Britain, nor to the other natives of America, who are friends to the same." It appears, indeed, that this claim was only intended to secure the peace and property of the Six Nations, and strengthen their connexion with the British Crown. There are however a multitude of treaties and public transactions subsequent to that period, which fully shew, that neither the Crown or people of Great Britain ever really considered or treated the Six Nations as any other than allies.\* And whenever they had been told of our claim of dominion over them, they have never failed to resent it in the most sensible manner. This particularly happened after the peace of *Ryswick*, when Captain Scyler being sent to Canada, by the Government of New York, to settle some disputes respecting the independency of the Six Nations (which the Governor of Canada resolutely maintained) he imprudently asserted, that they were in a state of subjection to the Province of New York, which being afterwards reported to them

\* L'Abbé Reynal observes, " That in his computation of French subjects in Canada, he did not include the many INDIAN ALLIES. None of these were ever considered as subjects, though they lived in the midst of a great European colony; the smallest clans still preserved their independence.—It is, he says, his own species,—it is mankind,—it is his equal, that the Indian loves and respects, but he would hate a master, and destroy him." Vol. 4.

them was, as Governor Colden observes, "so much resented by the Five Nations, that a deputation of the most considerable Sachems was sent to Albany, in June 1699, to complain of it; and they sent at the same time deputies to Canada, to conclude the peace independently of the English." And if ever they have seemed *not* displeased at being called subjects of Great Britain, it was because they did not understand the meaning of the term, having no word in their language capable of conveying any ideas of our kinds of political subjection. They speak of all their allies and friends in terms that express the natural relations of consanguinity, calling them fathers, brothers, nephews or cousins. The English they style brothers, and the King they call father. In a message which they sent to the Governor of New York, they said, " You say, that we are subjects of the King of England and Duke of York, but we say, we are *brothers* (*allies and EQUALS*) we must take care of ourselves," and in support of this just opinion,---we need only refer to the apposite and energetic words of the *United States*, " We hold these truths to be self-evident, THAT ALL MEN ARE CREATED EQUAL; that they are endowed by their Creator with certain unalienable rights;---that among these are life, liberty and PUR-SUIT OF HAPPINESS."\*

D

" He

\* Declaration of Independence, on the fourth of July, 1776.  
 " Though the powers of Europe have disputed about the dependency of the Confederates (or Six Nations) on the crown of England, and whether they are subjects, or not,—the same will not bear disputing in this city, where we know,----that they are not subject to our laws;----that they have no magistrates appointed over them by our King;---that they have no representatives in our assemblies;---that their own consent is necessary to engage them in a war on our side:-----But that they have the power of life and death, peace and war, in *their own councils*, without being accountable to us. Subjection is what they are *unacquainted with*."  
 See *Evan's Political and Mechanical Essays*, printed in 1756.

" *He gave us only over beast, fish, fowl,*  
 " *Dominion absolute; that right we hold*  
 " *By his donation;---but man over man*  
 " *He made not Lord;---such title to himself*  
 " *Reserving, human left from human, free.*"\*

The Five Nations added upon the foregoing occasion,  
 " *These arms* (the Duke of York's) fixed upon the  
 " posts, cannot defend us from the arms of *La Barre*,"  
 then Governor of Canada, who was marching a considerable army against them, but despairing of success, he invited them to treat of *peace*, and accordingly *Garrangula*, a chief Sachem of the Onondagoes, in behalf of the Confederacy, told La Barre, at the head of his army, " *We are born free.---We neither depend on Ton-*  
 " *nondio* (meaning the Governor of Canada) *nor on*  
 " *Corlear*, the English Governor. We may go  
 " where we please, carry with us whom we please, &c.  
 " If your allies be your slaves, use them as such; command them to receive no other but your people.  
 " We have done less than either the English or French,  
 " who have usurped the lands of so many nations, and  
 " chased them from their own country."†

It is time however to close this review of transactions, tending to evince the right of the native Indians of America to their respective countries: for though many other facts of the like import exist, enough have already been cited to produce the fullest conviction on this subject. It has now been seen, and proved, that the several Indian nations of America, at the discovery of that continent, were free and independent communities, owing neither allegiance nor subjection to any foreign state; that they have neither ceded nor forfeited their freedom and independency by any subsequent act; that they were the *original* and *just possessors*

\* Milton's *Paradise Lost*.

† See *La Honton*, &c.

sors of their several territories, and lived in the exercise of every act necessary to invest them with all the rights of occupancy; and therefore that they, by the laws of nature and of nations, *had*, and where it has not been otherwise specially ceded or relinquished, *still have* an absolute, indefeasible title to the exclusive jurisdiction of their persons, and to the dominion and *property\** of their several countries. This, by all civilians and natural law writers, is divided into *original* or *derivative*; the latter species, as it depends on a conveyance from others, may have been conveyed under particular entailments or limitations, sufficient to restrain the free disposal of it.--But *all original property* and especially that which a nation has in a territory, rightfully acquired and possessed, must necessarily be what is called "*full property*," and certainly the property of the Indians of America, in their several countries, must be considered as *original* and *full*, in the most perfect degree;----they were the primitive occupiers and owners of that continent, and received possession thereof *from the divine Creator himself*, free from the constraint of any *human limitation or power*.

" *Full property*" (says the judicious Dr. Rutherford)†

" *in*

\* The learned Author of the *Vindication of the Settlements of the Colony at Darien*, printed in London, in the year 1699, observes,----  
 " That the native proprietors and possessors of a country are vested with a power inherent in themselves, by which they may rightfully and authoritatively, without being accountable to any other, admit and receive strangers, foreigners, aliens and others, into their territories, and within their own proper and peculiar jurisdictions, and allow them the privilege and right of settling, inhabiting and trading among them; for it is one of the first principles, both of the laws of nature and nations, that they who are the original and primitive proprietors of a country and soil, may admit, welcome, and take in others, into the inhabiting, planting, cultivating and improving the same;---but no man can give, dispose, and alienate to another, that which he neither has in possession, nor can pretend any legal claim of title and right unto;----which the Pope both betrayed his pride and folly in doing, when he took upon him the granting of all the West Indies to the King of Spain, being therein *ridiculously liberal* of that, which did not ways appertain to him."

† *Institutes of Natural Law*.

" in any thing, is a perpetual right to use it to any purpose, and to dispose of it at pleasure. Property (continues he) in the strict notion of it, is such a right to a thing, as excludes all persons, except the proprietor, from all manner of claim upon it. No person therefore can, consistently with such a right, take the thing from him, at any time, or hinder him in the free use of it, or prevent him from disposing of it, as he pleases."---And the learned and accurate Woolaston remarks, " To have the property of any thing, and to have the sole right of using and disposing of it, are the same thing;----they are equivalent expressions."<sup>\*</sup>

It has also been seen, and will be more fully shewn in the succeeding pages, that this, the title of the natives, by frequent purchases, numerous treaties, alliances and other publick transactions, has been, in the fullest manner, asserted and confirmed.

Upon the whole, therefore, as the Indian Nations of America are unquestionably intitled to all the rights of " full property" in their several countries, it results as a necessary and final conclusion, that they have an indefeasible right freely to sell, and grant to any person whatsoever; and that all sales and conveyances made by any Indian tribe or nation of their lands, are in every respect, sufficient to afford the most valid and perfect title to the same.

Having thus, we hope, fairly and fully established the right of the natives to their several territories, we shall next

\* Religion of Nature.

Puffendorf says, " Ea est vis Domini, ut derebus que tanquam propriæ, et in solidum ad nos pertinent pro arbitrio nostro disponere possumus. Ut quis rem suam possit alienare, seu in alterum transferre, id ipsum ex dominii plenæ naturæ resultat. Cum enim hoc Domino dit facultatem de re pro arbitrio disponendi, utique vel præcipua ejus facultatis pars videtur, si ita placeat, eam in alterum posse transferre (de juris nates gent.)"---- A multitude of authorities of the like import might be cited, but the fact here asserted, is too notorious to need confirmation,

next consider the justice and legality of the claim of *Virginia* to the lands *westward* of the *Allegany mountain*. As far as this pretension is founded on a charter granted to Sir Walter Rawleigh in 1583;---a patent issued by James the First in 1602, or one granted in 1609, we must take the liberty of generally referring our readers to an excellent pamphlet, called **PUBLIC GOOD**, written by the celebrated Author of *Common Sense*, for a full and complete refutation of such pretension; but, as that *State* has set up another claim, founded upon a deed from the Six United Nations of Indians to King George the Second, obtained at a treaty held with them at *Lancaster* in *Pennsylvania*, in the year 1744, by Lieutenant Governor *Thomas* of that province, and commissioners from *Maryland* and *Virginia*,---we shall proceed to examine that deed and treaty.

Governor *Thomas*, June the 25th, spoke to these commissioners, and the chiefs of the *Six Nations*, as follows:

At a treaty held by me two years ago, in behalf of the government of *Pennsylvania*, with a number of the chiefs of the Indians of the *Six Nations*, I was desired by them to write to the Governor of *Maryland*, concerning *some lands* in the *back parts* of that province, which they claim a right to from their *conquests*, over the ancient possessors, and which *have been settled* by *some of the inhabitants* of that government, *without their consent, or any purchase from them*. It was at that time understood, that the claim was upon *Maryland only*; but it has since appeared by some letters formerly wrote by Mr. President *Logan* to the late Governor of *Maryland*, that it related likewise to *some lands in the back parts of Virginia*. The Governors of these colonies soon manifested a truly equitable disposition to come to any reasonable terms with the *Six Nations*, on account

account of those lands,\* and desired, that for that end a time and place might be fixed for a treaty with them.

The same day the Indians replied to Governor Thomas, and said---But since there are some disputes between us, respecting the lands possessed by them (*the inhabitants of Maryland and Virginia*) which formerly belonged to us, we, according to our custom, propose to have those differences first adjusted, and then we shall proceed to confirm the friendship subsisting between us, which will meet with no obstruction, after these matters are settled.

*A Belt.*

The Governor answered----I receive your belt with great kindness and affection; and as to what relates to the government of *Virginia* and *Maryland*, the honourable commissioners now present, are ready to treat with you.

The commissioners of *Virginia* on the 27th of June, spoke as follows:

*Brethren,*

IN the year 1736, four of your Sachems wrote a letter to *James Logan*, Esq; the President of *Pennsylvania*, to let the Governor of *Virginia* know, that you (*the Six Nations*) expected some consideration for lands IN THE OCCUPATION OF SOME OF THE PEOPLE OF *VIRGINIA*. Upon seeing a copy of this letter, the Governor, with the Council of *Virginia*, took some time to consider of it. They found on looking into old treaties, that you had given up your lands to the great King, who has had possession of *Virginia* above 160 years; and under that great King the inhabitants of *Virginia* hold their land; so they thought there might be

\* In 1742, the Six Nations complained to the Governor of *Pennsylvania*, of their lands being settled, and insisted upon the settlers being removed, which was accordingly done. They likewise laid claim to some lands in *Maryland* and *Virginia*, which occasioned the treaty at *Lancaster*, in 1744. See Inquiry into the Causes of the Alienation of the Delawares and Shawnees, printed in 1759.

be some mistake: wherefore, they desired the Governor of New York to enquire of you about it. He sent his interpreter to you in May, 1743, who laid this before you at a Council held at *Onandago*; to which you answer, "That if you had any demand or pretensions on the Governor of *Virginia* any way, you would have made it known to the Governor of *New-York*." This corresponds with what you said to Governor *Thomas*, in the treaty made with him at *Philadelphia* in July, 1742; for then you only make your claim to lands in the government of *Maryland*. Tell us what nations of Indians you conquered any lands from in *Virginia*; how long it is since, and what possession\* you have had; and if it does appear that there is any land ON THE BORDERS OF VIRGINIA, that the Six Nations have a right to, we are willing to make you satisfaction.

The Six Nations the same day replied and said. In your speech this morning you were pleased to say, we had wrote a letter to *James Logan* about seven years ago;

\* Mr. *Colden*, the late Governor of *New York*, in his History of the Five Nations, observes, That in the year 1664, the Five Nations, being amply provided by the English with fire arms and ammunition, gave a full swing to their warlike genius. They carried their arms as far south as *Carolina*,--to the northward of *New England*, and as far west as the river *Mississippi*, over a vast country, which extended 1200 miles in length from north to south, and about 600 miles in breadth, where they entirely destroyed whole nations, of whom there are no accounts remaining among the English:----And Governor *Pownal*, who many years ago diligently examined into the rights of the natives, and particularly into those of the northern confederacy, says, in his Book intituled, *The Administration of the Colonies*,--That the right of the Five Nation Confederacy to the Hunting Lands of *Ohio*, *Ticuckfouchondite*, and *Scaniaderinda*, by the conquest they made in subduing the *Shaoanaes*, *Delawares*, (as we call them) *Twilwees* and *Oilnois*, may be fairly proved, as they stood possessed thereof, at the peace at *Riswick*, in 1697; and confirmatory hereof, Mr. Lewis Evans, a gentleman of great American knowledge, in his Map of the Middle Colonies, published in America, in the year 1755, has laid down the country on the south easterly side of the river *Ohio*, as the Hunting Lands of the Six Nations, and in the analysis to that map, remarks,--"The Indians on *Ohio* consist of the several nations round, under the protection or subjection of the confederates, as the *Delawares*, *Shawanees*, &c.

ago, to demand a consideration for our lands in the possession of some of the Virginians. That you held them under the great King for upwards of 160 years, and that we had already given up our right; and therefore you had desired the Governor of New York to send his interpreter to us last year at *Onandago*, which he did; and as you say, we in council, at *Onandago*, did declare, that we had no demand upon you for lands, and that if we had any pretensions, we should have made them known to the Governor of *New York*; and likewise you desire to know, if we have any right to the *Virginia* lands, and that we will make such right appear, and tell you what Nation of *Indians* we conquered those lands from. Now we answer, we have the right of conquest, \* a right too dearly purchased, and which cost us too much blood, to give up without any reason at all, as you say, we have done at *Albany*; but we should be obliged to you, if you would let us see the letter, and inform us, who was the *interpreter* and whose names were put to that letter; for as the whole of the transaction cannot be above a years standing, it must be fresh in every body's memory, and some of our council would easily remember it; but we assure you, and are well able to prove, that neither we, nor any part of us have ever relinquished our right, or ever gave such an answer, as you say is mentioned in your letter. Could we, so few years ago, make a formal demand by *James Logan*, and not be sensible of our right? And hath any thing happened since that time to make us less sensible? No; and as this matter can be easily cleared up, we are anxious it should be done; for we are positive no such thing was ever mentioned to us at *Onandago*, nor any where else. All the world knows we conquered the several nations living on *Susquehanna*,

\* See *Colden's History of the Six Nations.*  
See *Smith's History of New York.*

*nah, Cobongorontas, and on the back of the great mountains of Virginia, &c. They feel the effects of our conquests, being now a part of our nation, and their lands at our disposal.* We know very well it hath often been said by the Virginians, that *the great King of England*, and the people of that colony, conquered the Indians who lived there; but it is not true. We will allow they have conquered the *Sachdagughroonow*, and drove back the *Tuscororaws*, and that they have, on that account, a right to some part of Virginia; but as to what lies beyond the mountains, we conquered the nations residing there; and that land, if the Virginians ever get a good right to it, it must be by us. We must now tell you what mountains we mean, that we say are the boundaries between you and us.

They then observed, that about twenty years ago, at Albany, they made a fence of wampum about the middle of a hill. After they left Albany, they brought the road more to the west, that we might comply with your proposal. " They afterwards agreed to alter the road again, and concluded by saying at last, *We brought it to the foot of the Great Mountains, where it now is, and it is impossible for us to remove it any further to the west; those parts of the country being absolutely impassable by either man or beast, &c.* and then Tachanoontia added, " He forgot to say, that the affair of the road must be looked upon as a preliminary to be settled, before the grant of lands," (to wit, the lands in the occupation of some people of Virginia, as the Commissioners expressed it in their speech of that morning) " and that either the Virginia people must be obliged to remove more easterly; or if they are permitted to stay, that our warriors marching that way to the southward, shall go shares with them, in what they plant."

The Virginia Commissioners, June the 28th, observed,

served, We are now come to answer what you said to us yesterday, since what we said to you before, *on the part of the great King, our Father,* has not been satisfactory. You have gone into old times, and so must we. It is true that the *great King holds Virginia, BY RIGHT OF CONQUEST, and the bounds of THAT CONQUEST to the westward IS THE GREAT SEA.* If the Six Nations have made any conquest over *Indians* that may at any time have lived on the west side of the great mountains of *Virginia*, yet they never possessed any lands there, that we have ever heard of. That part was altogether *deserted*, and free for any people to enter upon, as the people of *Virginia* have done by order of the great King, very justly, as well by *an ancient right*, as by its being reed from the *possession* † of any other, and from any claim even of you our brethren, the Six Nations, until within these eight years. The first treaty between the great King, in behalf of his subjects in *Virginia* and you, that we can find, was made at *Albany* by Colonel *Henry Coursey* seventy years since: this was a *treaty of friendship*. The next treaty was also at *Albany* about fifty-eight years ago, with the Lord *Howard*, Governor of *Virginia*; then you declare yourselves *subjects of the great King, our Father, and gave up all your lands for his protection.*\* The *Virginia Commissioners* afterwards mentioned another treaty at *Albany*, with Governor *Spotswood*, wherein (they said) you have not recited it as it is: for the white people, your brethren of *Virginia*, are in no article of that treaty prohibited to pass and settle to the westward of the great mountains. It is the *Indians tributary to Virginia* that are restrained, as you and your *tributary Indians* are from passing to the *eastward* of the same mountains, or to the southward of *Cohongorooton*; and you

† The country at that time, and for many years after, was the hunting lands of the *Six Nations, Shawaneſe, &c.* and they had many towns within it.

\* See page 22, 23.

you agree to this article in these words. That the great river of *Potowmack*, and the *high ridge of mountains*, which extend all along the FRONTIERS OF VIRGINIA to the westward of the present settlements of that Colony, shall be FOR EVER the established boundaries between the Indians subject to the dominion of Virginia, and the Indians belonging to and depending on the Five Nations; so that neither our Indians shall not, on any pretence whatsoever, pass to the northward or westward of the said boundaries, without having to produce a passport under the hand and seal of the Governor or Commander in Chief of Virginia; nor your Indians to pass to the southward or eastward of the said boundaries, without a passport in like manner from the Governor or Commander in Chief of New York.----And what right can you have to lands that you have no right to walk upon, but upon certain conditions? It is true you have not observed that part of the treaty, and your brethren of Virginia have not insisted upon it with a due strictness, which has occasioned some mischief. This treaty has been sent to the Governor of Virginia, by order of the great King, and is what we must rely on, and being in writing, is more certain than your memory. That is the way the white people have of preserving transactions of every kind, and transmitting them down to their children's children for ever; and all disputes among them are settled by this faithful kind of evidence, and must be the rule between the great King and you. This treaty, your Sachems and Warriors signed some years after the same Governor *Spotswood*, (in right of the great King) had been with some people of Virginia, in possession of those very lands, which you have set up your late claim to. The Commissioners for Indian affairs at Albany gave the account we mentioned to you yesterday, to the Governor of New-York, and

he sent it to the Governor of Virginia;----their names will be given you by the interpreter.

" Brethren,

" THE DISPUTE IS NOT BETWEEN VIRGINIA  
" AND YOU; it is setting your right against the great  
" King, under whose grants the people you complain  
" of, are settled. Nothing but a command from the  
" great King can remove them;---they are too power-  
" ful to be removed by any force of you, our breth-  
" ren; and the great King, as our common Father,  
" will do equal justice to all his children: wherefore,  
" we do believe they will be confirmed in their pos-  
" sessions."

Here it may be fit to suspend our narrative for a moment, while we just take notice, that the great Congress held at Albany, in 1754, by order of the King, and the royal proclamation of October the 7th, 1763, effectually destroyed this belief of Virginia, as will be seen in the succeeding pages.

The Commissioners added, " We may proceed to settle, what we are to give you *for any right you may have, or have had*, to all the lands to the southward and westward of Maryland and Pennsylvania, though we are informed that the Southern Indians claim these very lands that you do."

On the 30th of June, the Six Nations spoke as follows:

" Brother of Virginia,

" The world *at first* was made on the other side of the Great Water, different from what it is on this side, as may be known from the different colours of our skin and our flesh, and that which you call justice, may not be so among us. You have laws and customs, and so have we. The great King might send you over to conquer the Indians, but it looks to us that God

" did

" did not approve of it; if he had, he would not have  
 " placed the sea where it is, as the limits between us  
 " and you.--Though great Things are well remembered  
 " among us, yet we do not remember that we were ever  
 " conquered by the great King, or that we have been  
 " employed by the great King to conquer others. We  
 " do remember we were employed by Maryland to  
 " conquer the Conestogoes; and that the second time  
 " we were at war with them, we carried them all off.  
 " We will now speak to the point between us. You  
 " say you will agree with us as to the road; we desire  
 " that may be the road which was last made, (the  
 " waggon road.) N. B. This was up to the foot of  
 the great mountain, as the Six Nations observed,  
 where it now is, and it is impossible for us to re-  
 move it farther to the west.

On the 2d of July, the Commissioners mentioned,  
 that " As we have already said enough to you on the  
 subject of the title to the lands, you claim from Virginia,  
 we have no occasion to say any thing more to you on  
 that head, but come directly to the point." Where-  
 fore, they told the Six Nations, that with the  
 goods they had there, which cost £ 200, Pennsylvania  
 money, and £ 200 in gold, " We will give you, our  
 brethren of the Six Nations, upon CONDITION that  
 you immediately make a deed RECOGNIZING THE  
 KING'S RIGHT to all the lands THAT ARE, or shall  
 be, BY HIS MAJESTY'S APPOINTMENT, IN THE  
 COLONY OF VIRGINIA."

Canassatego (the chief speaker of the Indians) desired  
 the Commissioners would represent their case to the  
 King, in order to have a farther consideration, when  
 the settlements increased much further back. Then  
 the Six Nations executed a deed to the King,----and  
 Canassatego delivered it " for the use of his Father the  
 great

*great King,\* and hoped he would consider them.*"---

This is a brief, but faithful detail of the most material parts of the transactions, relative to the much relied upon *Lancaster deed*; and it will appear by subsequent conferences with the Six Nations, that they were either deceived by the commissioners, or the Interpreter who explained their speeches to them, and that they never intended to sell any lands *westward of the Alleghany mountain*, but only such lands " *as were in the occupation of some people of Virginia.*"---See the Commissioners speech of the 27th of June.

In April 1752, the Governor of Virginia, appointed Joshua Fry, Lunsford Lomax, and James Patton, Esqrs. Commissioners in behalf of that colony, to go to the *Ohio*, and gave them instructions to obtain, if possible, a *confirmation*, from the Indians settled there, of the *Lancaster deed*, and therein observed, " That " as some *doubts* have arisen about the treaty of Lancaster, and *surmises* have been spread, as if the Six " Nations thought themselves imposed upon by it; to " have the treaty explained, and his *Majesty's* title to all " the lands expressed, and intended to be acknowledged by the said treaty fully explained."

A treaty, in pursuance of the above instructions, was held at *Logg's town* on the *Ohio*, between these Commissioners and the *Half King*, and some other Indians of the *Six Nations*.

On the 9th of June, the *Commissioners* had a *PRIVATE* Conference with the *Half King* and the other Chiefs, when they produced the *Lancaster deed* and other papers. The Indians thanked them for letting them know what the *Onondago Council* had done, and blamed (the Commissioner) for keeping the deed *private, &c.* and said, the *Onondago Council* never told them, that they had

\* See *treaty* printed by B. Franklin, 1744.

had sold further, than the Warriors Road, at the foot of the Allegany mountain, and that they would confirm whatever they had done.

June the 10th, the Commissioners and Indians met again, when the former spoke as follows:

Brethren,

*AT a treaty at Lancaster, in the year 1744, between the governments of Virginia, Maryland and Pennsylvania, you made a deed recognizing the King's right to all the lands in Virginia, as far as it was then peopled or bounded by the King our Father, for which you received the consideration agreed on;--at the same time Canaffatego desired the Commissioners would recommend you to the King's further favour, when the settlements should increase much further back:----this the Commissioners promised, and confirmed it by a writing under their hands and seals; in consequence of which a present was sent you from the King, by Mr. Conrad Weiser, which he since informed us that he delivered you, at a council held here in the year 1748. Now the King your Father, to shew the love he bears to justice, as well as his affection to you his children, has sent a large present of goods to be divided among you and your allies, which is here ready to be delivered to you, and we desire you may confirm the treaty at Lancaster.*

Brethren,

It is the design of the King your Father, at present, to make a settlement of British subjects on the south east side of Ohio, that we may be united as one people, by the strongest ties of neighbourhood, as well as friendship, and by these means prevent the insults of our enemies. From such a settlement greater advantages will arise to you than you can at present conceive; our people will be able to supply you with goods much cheaper

cheaper than can at this time be afforded, will be a ready help in case you should be attacked, and some good men among them will be appointed with authority to punish and restrain the many injuries and abuses too frequently committed here by disorderly white people.

Brethren,

We assure you, THAT THE KING our Father, BY PURCHASING YOUR LANDS, HAD NEVER ANY INTENTIONS OF TAKING THEM FROM YOU; but that we might live together as one people, AND KEEP THEM FROM THE FRENCH, who would be bad neighbours: He is not like the French King who calls himself your Father, and endeavoured about three years ago with an armed force, to take possession of your country, by setting up inscriptions on trees, and at the mouths of the creeks on this river, by which he claims these lands; though at their coming, and for many years before, a number of your brothers, the English, were residing in this town, and several other places on this river. You remember how he (the French King) scattered the Shawanee, so that they were dispersed all over the face of the earth, and he now threatens to cut off the Twigtwees; this is to weaken you; that he may cut you off also, which he durst not attempt while you are united. On the contrary, the King your Father will lay his hand upon your heads, under which protection you will always remain safe.

June the 11th the Commissioners and Indians met again, when the Half King of the Six Nations spoke as follows:

Brother, the Governor of Virginia,

You acquainted us yesterday with the King's right to all the lands in Virginia, as far as it is settled, and back from thence to the sun setting, whenever he shall think fit to extend his settlements. You produced also a copy of

of his deed from the *Onondago* council, at the treaty at Lancaster, and desired that your brethren of *Ohio* might likewise confirm the deed. Brother, the Governor of *Virginia*, we are well acquainted that our chief council, at the treaty of Lancaster, confirmed a deed to you FOR A QUANTITY OF LAND IN VIRGINIA, which you have a right to, and likewise our brother *Onas* has a right to a parcel of land in *Pennsylvania*: We are glad you have acquainted us with the right to those lands, and assure you we are willing to confirm any thing our council has done in regard to the lands; BUT WE NEVER UNDERSTOOD, BEFORE you told us yesterday, that the lands then sold, were to extend further to the sun setting, than the hill on the other side the *Allegany* hill, so that we cannot give you a farther answer."

" Brother,

You acquainted us yesterday that the French were a designing people, which we now see, and know that they design to cheat us out of our lands; you told us that the King of England designed to settle some lands on the south east side of *Ohio*, that it might be better in our brethren's power to help us, if we were in need, than it is at present, at the great distance they live from us. We are sure the French design nothing else but mischief, for they have struck our friends the *Twig-twees*: we therefore desire our brothers of *Virginia* may build a strong house at the fork of *Monongehela*, to keep such goods, powder, lead and necessaries, as shall be wanting, and as soon as you please; and as we have given our cousins, the *Delawares*, a King who live there, we desire you will look on him as a Chief of that nation. Gave a large string of wampum."

" June the 12th. This day the Indians gave the Commissioners an answer, concerning the land which the *Ohio company* wanted to settle. They desired them to

*build a strong house or fort very soon.* As the Commissioners had asked for the lands at Monongehela, they imagined the Indians had given up those upon that river, but they (the Indians) only meant GROUND SUFFICIENT FOR THE FORT to stand upon, as appeared by a private conversation with the Half King, who said *that was all that was intended*, (though he always spoke the sentiments of others, and not his own) as he knew a proper settlement could not be made without a large quantity of land."

June 13. The Half King speaking to the Commissioners, observed,

" Brother,

We have heard what you said in regard to the King's design of making a settlement of his people on the waters of the river Ohio; you likewise told us you had a deed for those lands, signed by our council at the treaty of Lancaster. We assure you of our willingness to agree TO WHAT OUR COUNCIL DOES, OR HAS DONE; but we have not the full power here in our hands, on Ohio: We must acquaint our Council at Onondago, of the affair, AND WHATEVER THEY BID US DO, WE WILL DO---In regard to your request to build a strong house at the Monongehela, you told us it would require a settlement to support it with provisions and necessaries, and it is true; but we will take care that there shall be no scarcity of that kind, UNTIL WE CAN GIVE YOU A FULL ANSWER; although in all our wars we do not consider provisions, for we live on one another, but we know it is different with our brethren the English.

Notwithstanding these honest explanations, " the Commissioners had an instrument drawn for confirming " the deed made at Lancaster, and containing a promise " that the Indians would not molest our settlements on " the south east side, Ohio. (They) desired Mr. Mon-

" tour

" tour to converse with his brethren the other Sachems  
 " IN PRIVATE ON THE SUBJECT, to urge the neces-  
 " sity of such a settlement, and the great advantage it  
 " would be to them, as to their trade or their security:  
 " On which they retired for some time, and then re-  
 " turned: and Mr. Montour said THEY WERE SA-  
 " TISFIED IN THE MATTER, and were willing to  
 " sign and seal the writing, which was done and wit-  
 " nessed by the gentlemen then present."

The reader will be pleased to make his own observations upon this very extraordinary transaction:---We shall forbear to anticipate them, by any remarks of ours.

#### I N D I A N D E E D.

" WHEREAS at a treaty of *Lancaster*, in the county of *Lancaster*, and province of *Pennsylvania*, held between the government of *Virginia* and the *Six United Nations of Indians*, in the year of our Lord 1744, the Honorable *Thomas Lee* and *William Beverly*, Esqrs. being Commissioners, a deed recognizing and acknowledging the right and title of his Majesty, our Sovereign Lord the King of Great Britain, to all the lands within the colony, as it was then or hereafter might be peopled, and bounded by his said Majesty, our Sovereign Lord the King, his heirs and successors, was signed, sealed and delivered by the Sachems and Chiefs of the *Six United Nations*, then present, as may more fully appear by the said deed, reference thereto being had: WE *Conogariera*, *Che-seaga*, *Conousagret*, *Eaghuisara*, *Togroudoara*, *Thonarissa*, Sachems and Chiefs of the said *Six Nations* now met in Council at *Logg's Town*, do hereby signify our consent to, and confirmation of the said deed, in as full and ample a manner, as if the same was here recited. And whereas his said Majesty, King of Great Britain, has at present a design of making a

" settlement

" settlement or settlements of British subjects on the  
" southern or eastern parts of the river Ohio, called  
" otherwise Allegany. WE in Council (Joshua Fry,  
" Lunsford Lomax and James Patton, Esqrs. being  
" Commissioners on behalf of his Majesty,) do give our  
" consent thereto; and do farther promise, that the said  
" settlement or settlements shall be unmolested by us, and  
" that we will, as far as in our power, assist and pro-  
" tect the British subjects there inhabiting. In witness  
" whereof we have hereunto set our hands and seals,  
" this 13th day of June, in the year of our Lord  
" God 1752."

About the month of September, 1753, a treaty was held by *William Fairfax*, Esq; one of the Council of Virginia, by order of Governor *Dunwiddie*, at *Winchester* in that state, with Chiefs of the *Six United Nations*; and several of the different tribes of *Indians* residing on or near the *Ohio*. This remarkable treaty is in the *British Plantation Office*, *Whitehall*. On the back of the journal of this treaty, is inserted a memorandum signed by Mr. Commissioner *Fairfax*, to this effect: That he did not dare to mention the affair of the lands over the *Great Mountain*, or the *Lancaster* deed, as the *Indians* were in a very bad humour on account of that transaction. The journal of this treaty, it is supposed, is in the proper office of *Virginia*.

In September and October, 1753, a treaty was held at *Carlisle* in *Pennsylvania*, by *Richard Peters, Isaac Norris and Benjamin Franklin, Esqrs.* Commissioners appointed by *Mr. Hamilton, Lieutenant Governor of Pennsylvania*, with some of the most considerable of the *Six Nation, Delaware and Shawneſſe Indians.*

At this treaty, on the 3d of October, *Scarraday*, \* the Half King, spoke thus: Brother

\* The same half King, who told the Virginia Commissioners at Logg's town, that all the ground the Indians meant to grant on Ohio, was sufficient for the fort to stand upon. Page 42.

Brother Onas,

I desire you will hear and take notice of what I am going to say to you. *The Governor of Virginia desired leave to build a strong house on the Ohio, which came to the ears of the Governor of Canada; this caused him to invade our country.* We desire that *Pennsylvania and Virginia would forbear settling our lands over the Alleghany hills.* We advise you rather to call your people back on this side (the eastern side) of the hills, least damage should be done," &c.

In November, 1753, Major (now General) Washington, a Commissioner from *Virginia*, summoned an Indian Council at *Logg's Town* on the *Ohio*, consisting of the *Half King* and a number of Warriors of the *Six Nations, Delaware's and Shawneffe*; and spoke to them as follows:

" The French have driven you out of your country, and declared you had nothing on the *Ohio*. The *Englisb*, who are your brothers, have too much justice to think the *Six Nations*, their *faithful allies*, should ever be treated in this manner. After you had been with the Governors of *Virginia* and *Pennsylvania*, they have, at your repeated request, sent an army to support your rights, TO PUT YOU IN POSSESSION OF YOUR LANDS, DISPOSSESS THE FRENCH, AND SECURE YOU ALL THIS COUNTRY."

The *Six Nations* being very uneasy on account of settlements, which the *Virginians* were making westward of the *Allegany Mountain*, and of the *deed* got from them at *Lancaster*; serious complaints were made to the *British Ministers*, and on the 18th of September, 1753, the following *royal instruction* was sent to Sir *D'Anvers Osborne*, Governor of *New York*:

" That nothing may be wanting to convince the Indians of the sincerity of our intentions, you will do  
" well

" well to examine into the complaints they have made,  
 " of being defrauded of their lands; to take all proper and  
 " legal methods to redress their complaints, and to gra-  
 " tify them by reasonable purchases, or in such other  
 " matters as you shall find most proper and agreeable to  
 " them, for such lands as have been unwarrantably taken  
 " from them, and for such other, as they may have a de-  
 " sire to dispose of. As we find it has been usual on  
 " former occasions, when an interview has been held  
 " with the Indians, for the other neighbouring govern-  
 " ments in alliance with them, to send Commissioners to  
 " be joined with those of New York, and as the present  
 " wavering disposition of the Indians equally affects  
 " the other provinces, we have wrote to the Governors of  
 " Virginia, Pennsylvania, Maryland, New Hampshire,  
 " Massachuset's and New Jersey, desiring them to re-  
 " present to their respective Assemblies, the utility and  
 " necessity of this measure, and to urge them to make  
 " a proper provision for it; and therefore it will be  
 " necessary, when you have settled the time and place  
 " of meeting, you should give them early notice of it;  
 " and this leads us to recommend one thing more to  
 " your attention, and that is to take care that all the  
 " provinces be (if practicable) comprised in one general  
 " treaty to be made in his Majesty's name; it appearing  
 " to us that the practice of a province making a sepa-  
 " rate treaty for itself, in its own name, is very im-  
 " proper, and may be attended with great inconveni-  
 " encies to his Majesty's service.

" Whitehall,  
 " Sept. 18, 1753.

DUNK HALLIFAX,  
 J. GRANVILLE.  
 DUPPLIN."

" To Sir Danvers Osborne,  
 " Governor of New York."

In consequence of this instruction, a commission was  
 opened

opened at *Albany*, with the *Six United Nations of Indians*, on the 19th day of June, 1754, by the Honorable *James Delancey*, (Sir *Danvers Osborne* being then dead) Lieutenant Governor of the province of *New York*, and the following Crown Commissioners from their several provinces,

For <i>New York</i> ,	Hon. Joseph Murray,	Esqrs. of
	Will. Johnson,	his Ma-
	John Chambers,	jesty's
	William Smith,	council.
For <i>New Hampshire</i> ,	Theod. Atkinson,	
	Richard Willand,	Esqrs.
	Miskel Weare,	
	Henry Sherburne,	
For <i>Massachusetts Bay</i> ,	Samuel Willis,	
	John Chandler,	Esqrs.
	Oliver Partridge,	
	John Worthington,	
For <i>Connecticut</i> ,	William Pitkins,	
	Roger Woolcot,	Esqrs.
	Elisha Williams,	
For <i>Rhode Island</i> ,	Stephen Hopkins,	Esqrs.
	Martin Howard,	
For <i>Maryland</i> ,	Benjamin Tasher,	Esqrs.
	Benjamin Barnes,	
For <i>Pennsylvania</i> ,	John Penn,	
	Isaac Norris,	Esqrs.
	Benjamin Franklin,	
	Richard Peters,	
For <i>Virginia</i> ,	-----Lieutenant Governor <i>Delancey</i> , of	
	<i>New York</i> .	

N .B. On the 25th of October, 1754, Governor *Dunwiddie* wrote to the Lords Commissioners for trade and plantations, that he had requested Governor *Delancey* to appear for, and represent the colony of *Virginia*, at the

the Congress to be held by his Majesty's command, at Albany, with the *Six United Nations of Indians.*

This letter, may be found in the Secretary's office, of the state of *New York*; the original is in the office of the Board of Trade, *Whitehall, London.*

*Extracts from the great Treaty at Albany, in 1754.*

" His Honor the Lieutenant Governor of *New York* having yesterday directed Mr. *Banyar*, Deputy Secretary of the said province, to wait upon the Commissioners of the several provinces, and acquaint them his Honor desired, that they would meet in Council, in the City Hall of *Albany* this morning, in order to produce their powers, and proceed to business: The said Commissioners being accordingly met, took their seats, and produced their respective commissions, which were read.

His Honor then produced a letter from the Right Honorable the Lords of Trade, bearing date the 18th of September last, (see this letter in page 45,46) and the same was read."

On the 27th of June, the *Indians* complained of their lands being claimed, and said, they had not sold them.

On the 2d of July, the famous Sachem *Hendrick* delivered a speech in behalf of the *Six Nations*, and said " the Governors of *Virginia* and *Canada* are both quarrelling about lands, which belong to us. They quarrel, who shall have the lands. They have made a path thro' our country to trade, and build houses, without acquainting us with it. They should have first asked our consent to build there, as was done, when *Oswego* was built.

On the 28th of July, Governor *Delancey* and the and the other Commissioners spoke as follows to the *Six Nations.*

Brothers.

We gladly understand, that you gave no countenance  
to

to the French, who went to the *Ohio* and have entered ON YOUR LANDS. You did put this land under the King our Father, and he is now taking care to preserve it for you. For this end, among others, he has directed us to meet you here; for although the land is under the King's government, YET THE PROPERTY OR POWER OF SELLING IT TO ANY OF HIS MAJESTY'S SUBJECTS, having authority from him, WE ALWAYS CONSIDERED AS VESTED IN YOU. You complain about the Governors of *Virginia* and *Canada* fighting for your lands, and that they have made new roads through your country. What you say, is a great surprize to us. We all know, for five years past, the French have been marching troops into that country, WHICH WE EVER DID, AND DO STILL ACKNOWLEDGE TO BELONG TO YOU, although within your Father, the King of Great Britain's dominion, and UNDER HIS PROTECTION.

At a meeting of *Seventy* of the *Six Nations*, at Mr. Stevenson's in *Albany*, Friday, July the 5th, 1754.

Present John Penn,

Richard Peters, } Esqrs. Commissioners for  
Benjamin Franklin, } Pennsylvania.  
Isaac Norris,

Conrad Weiser, Esq; Interpreter.

Hendrick, the Chief, spoke as follows:

" We have heard since we came here, that our brother *Onas*, and our brother of *New England*, have had some disputes about the lands of *Shamokin*; a dispute of the same kind as that of the Governor of *Canada* and the Governor of *Virginia*: but we desire you will not differ with one another, for neither shall have it."

After these and other conferences, a treaty of alliance and defence was in the King's name concluded

with the *Six Nations*; and on the 7th of August, Governor *Hamilton* of *Pennsylvania*, in his speech to his Assembly, said, " It is with great satisfaction, that I now communicate to you the proceedings of the Commissioners at the late treaty at *Albany*, as on perusal thereof, you will clearly perceive that the lands on the river *Ohio* do yet belong to the Indians of the *Six Nations*, and have long since been put under the protection of the Crown of England."

On or about the 15th of April, 1755, General *Braddock* delivered a set of instructions to Sir *William Johnson*, Baronet, his *Britanic Majesty's* Superintendent of Indian affairs, and therein mentioned, that the *Five Nations of Indians*, on the 19th of July, 1701, had put all their Beaver Hunt under the protection of the King of England, to be guaranteed to them and their use; and that by deed bearing date in 1726, the *Cayugas*, *Senecas* and *Onondagos*, did put their lands and castles under the protection of the King of England, to be protected and defended by the said King, his heirs and successors for ever, to and for the use of them the said Indians, their heirs and successors for ever; and then the General declared, " That whereas the French have from time to time, by fraud and violence, built strong forts within the limits of the said land, contrary to the covenant chain of the said treaties. You are in my name to assure the said nations, that I am come, by his Majesty's order, to destroy all the said forts, and to build such others, as shall protect and shall secure the said lands to them, their heirs and successors for ever, according to the true intent and spirit of the said treaty; and I do therefore call upon them to take up the hatchet, and come and take possession of their own lands."

These engagements imposed the strongest obligations

tions upon the crown of *Great Britain, and its successors*, not simply to admit, but to support and maintain, against all opposition, the right of the *Six Nations* and their affigns, to their several countries.

While these transactions were carrying on in *America*, a negociation was begun in *Europe*, between the Courts of *France* and *Great Britain*, from which it will appear, that the title of the *Six Nations* to their unalienated lands and territories, was known, admitted and strongly asserted, not only in *America*, but by the Kings of *France* and *England*.

In the month of January, 1755, the Duke de *Mirepoix*, the King of *France's* Ambassador, in obedience to his instructions, proposed, that orders should be sent to the respective Governors of both nations in *America*, to *desist* from all farther acts of violence;----that matters should be restored without delay to the same situation on the *Ohio*, that they were in before the last war, and that the several pretensions of the two Kings should be referred to the Commissioners then sitting in *Paris*.

January 22d, 1755, the *British* Court answered, "That the possession of the territory towards the river *Ohio*, must be restored to the same situation it was actually in at the conclusion of the treaty at *Utrecht*,"

February the 6th, 1755, the King of *France* alledged, that the King of *England* had no pretensions to the country in 1679, and that the treaty of *Utrecht* had not made the least mention thereof. He at the same time proposed to the Court of *London* a preliminary convention, and suggested the provisional conditions thereof; one of which was, that the *English* subjects should *retire* to the *eastward* of the *Allegany Mountain*, and the *French* subjects to the *westward* of the river *Ohio*.

March

March the 7th, 1755, his Britanic Majesty proposed to agree to the foregoing conditions, in case the King of France would send orders to his Governor and Commanders in North America, to demolish, in six months, all the forts that had been erected at different places upon the Ohio, &c.

March the 27th. The King of France objected to this proposal; and April the 5th, the Court of England insisted upon it, and the two Courts continued indecisively negotiating, until the 14th of May, 1755, when the Duke de Mirepoix, presented a memorial to the British Ministry, and denied the British King had the least right to the lands westward of the Allegany Mountain; and in the second article of this memorial, the Court of France speaking of the Six Nations, said, These Savages are free and independent, and there are none of them who may be called subjects of either crown: What appears on the face of the treaty of Utrecht, in regard to this, is faulty, and can make no alteration in the nature of things. It is certain that no Englishman dare, without the risque of being massacred, tell the Iroquois (the Six Nations) that they are subjects of England. These Savage Nations are governed by themselves.\*

On the 7th of June, 1755, the British Minister delivered a memorial to the Duke de Mirepoix, and in the second and third articles, it is observed,---

Second article. "However free and independent the Savages in question (the Six Nations) may be, which is a point the Court of Great Britain will not discuss, (N. B. When a position will not bear a discussion, it is certainly most prudent to avoid every thing but positive assertions) they cannot be considered

\* Here we see the Confederated Nations are explicitly acknowledged by France to be distinct from the subjects either of that kingdom, or England.

" dered and treated otherwise than as subjects of Great  
 " Britain, by France in particular, since she has so-  
 "lemnly engaged by the treaty of Utrecht, to consider  
 " them as such."

This article evidently discovers that the British Ministry were conscious of no other foundation to their claim of dominion over the Six Nations, than a particular expression in the treaty of Utrecht, which might perhaps be urged against the Court of France, but could not alter "the nature of things," or at all affect these nations themselves, who were not parties to that treaty.

Third article. " Whatever pretext might be alleged by France, in considering these countries as the appurtenances of Canada, it is a certain truth, that they have belonged. AND AS THEY HAVE NOT BEEN GIVEN UP, OR MADE OVER TO THE ENGLISH, BELONG STILL to the same Indian nations,\* which, by the 15th article of the treaty of Utrecht, France agreed not to molest. What the Court of Great Britain maintains,---what it infests upon, is, That the Five Nations of the Iroquois, acknowledged by France to be subjects of Great Britain, are by origin, or by right of conquest, THE LAWFUL PROPRIETORS of the river Ohio, and the territory in question."

The capture of two French ships of war (the *Alcide* and

\* An incontrovertible proof this, that neither the British King nor his Ministers apprehended, that by the treaty or deed made at Lancaster in 1744, the Six Nations had sold to his Majesty, the Lands westward of the Allegany Mountain, otherwise they would not certainly have deserted a claim, which they might so easily have set up. The deed, such as it is, being made to George the Second, and not to Virginia. The King and his Ministers disdained to avail themselves of such a vague, unjustifiable and indefensible deed, procured for the inconsiderable sum of Four Hundred Pounds, Pennsylvania money, but honestly declared, that "they (the lands above mentioned) have not been given up, NOR MADE OVER TO THE ENGLISH," but " BELONG STILL TO THE SAME INDIAN NATIONS."

and *Lys*) by Admiral Boscawen's fleet on the following day, put an end to this negociation, and prevented the Court of France from further asserting the independency of the *Six Nations*, as would otherwise have doubtless been done.

On the 15th of May, 1755, Sir William Johnson delivered a speech to the *Six Nations*, and therein said.

“ Brothers and Allies of the *Six Nations*,  
 “ I declare to you in the presence of your Chiefs and  
 “ your Warriors, who are here assembled, and agree-  
 “ ably to the instructions I have received from the great  
 “ King, your Father, that if you will heartily give me  
 “ your assistance, I will reinstate you in the possession  
 “ of your lands.”

On the 18th of February, 1756, Sir William again spoke to the *Six Nations*; and in the name of the King of England, assured them, “ That he (the King)  
 “ would protect your country, and the lands which your  
 “ fathers conquered, and are of right your territories,  
 “ against all violence. General Shirley takes the  
 “ first opportunity of assuring you of his intentions,  
 “ fully to follow his Majesty's instructions herein.”

To this speech the *Six Nations* answered:

“ We are extremely thankful for the particular instructions the King has given to cultivate a strict friendship between us, and to protect our lands, and to recover those encroached upon by our common enemy,”

On the 24th of February, 1756, the *Six Nations* again spoke to Sir William Johnson, and said:

“ You have acquainted us that the great King, our  
 “ brother, is firmly resolved to defend our country,  
 “ and recover such parts of it as the French have en-  
 “ croached upon; also to protect us to the utmost of  
 “ his power by erecting forts for our safety and defence.”

In October 1758, a treaty was held with the *Six Nations*,

*Nations, Delawares, &c. at Easton in Pennsylvania, by the Governors of Pennsylvania and New Jersey, Commissioners for Pennsylvania, and the King's deputy superintendant of Indian affairs, when Thomas King, a great Warrior and Chief of the Six Nations, observed,*

" Brethren,

" The cause, why the Indians on the Ohio left you, " was owing to yourselves. When we heard of the " French coming there, we desired the Governors of " Virginia and Pennsylvania to supply us with implements and necessaries for war, and we would defend our lands, but these Governors disregarded our messages. The French came to us, treated with our people, used them kindly, and gained their affections. " THE GOVERNOR OF VIRGINIA SETTLED ON OUR LANDS FOR HIS OWN BENEFIT, but when we wanted his assistance, he forsook us."

On the 20th of August, 1760, General Monckton held a treaty at Fort Pitt, on the eastern side of the Ohio, with the Six Nations, Shawnee and Delawares, and delivered a speech from Sir Jeffery Amherst, then Commander in Chief of his Britannic Majesty's forces in North America, and therein mentioned that his Majesty had not sent him to deprive them of any of their lands and property; that he did not mean to take any of their lands, but as the necessity of his Majesty's service obliged him to take post, and build forts in some parts of their country, to prevent the enemy from taking possession of their lands, he assured them, that no part whatever of their lands joining to the forts, should be taken from them; nor any of the English people be permitted to settle upon them; and the General also promised them that their lands should remain their absolute property, and he would even give them some presents, as a consideration for the land, where such forts and trading

trading houses should be built upon; and concluded by declaring, that if they would lay out a space of ground adjoining each fort, to raise corn, in that case, he said, *fix yourselves the limits of your lands, so appropriated to us, and you shall receive such consideration for the same, as shall be agreed between you and us, to your satisfaction.*

The latter end of the year 1762, the following proclamation was issued at Fort Pitt, on the Ohio.

P R O C L A M A T I O N,  
By Henry Bouquet, Esquire, Colonel of Foot, and commanding at Fort Pitt and Dependancies.

WHEREAS by a treaty at Easton, in the year 1758, and afterwards ratified by his Majesty's Ministers, *the country to the west of the Allegany Mountain,* is allowed to the Indians for their hunting ground. And as it is of the highest importance to his Majesty's service, and the preservation of the peace, and a good understanding with the Indians, to avoid giving them any just cause of complaint: This is therefore to forbid any of his Majesty's subjects to settle or hunt to the west of the Allegany Mountains, on any pretence whatever, unless such have obtained leave in writing from the General, or the Governors of their respective provinces, and produce the same to the commanding officer at Fort Pitt. And all the officers and non commissioned officers, commanding at the several posts erected in that part of the country, for the protection of the trade, are hereby ordered to seize, or cause to be seized, any of his Majesty's subjects, who without the above authority, should pretend, after the publication hereof, to settle or hunt upon the said lands, and send them, with their horses and effects, to Fort Pitt, there to be tried and punished according to the nature of their offence, by the sentence of a court martial.

Signed Henry Bouquet.

On the 10th of February, 1763, a peace was concluded between *England* and *France*; and on the 7th of October, a royal proclamation issued, and instructions were sent to the Governor of *Virginia*, restraining him from granting any lands *to the westward of the Allegany Mountains*; and these instructions and that proclamation were conceived in the true spirit and faith of the assurances, so repeatedly given to the *Six Nations of Indians*, regarding their lands, as may be seen in the foregoing detail.

The following are the most essential parts of this proclamation, and these instructions.

" And whereas it is just and reasonable, and essential to our interest, and security of our colonies, " that the several nations or tribes of *Indians*, with " whom we are connected, and who live under our " protection,\* should not be molested or disturbed in such " parts of our dominions and territories, as not having been ceded to, or purchased by us, are reserved to " them, or any of them, as their hunting grounds: " We do therefore, with the advice of our Privy " Council, declare it to be our royal will and pleasure, " that no Governor or Commander in Chief in any of " our colonies of *Quebec*, *East Florida* or *West Florida*, " do presume, upon any pretence whatever, to grant " warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as " described in their commissions, as also That no Governor or commander in chief; of our other Colonies or plantations in *America* do presume for the " present and until our further will and pleasure be known to grant warrants of survey or pass patents " land, beyond the heads or sources of any of the rivers " which fall into the atlantic ocean from the West or  
H    "from

\* See the preceding treaty at *Albany* in 1754, and General Braddock's Instructions, &c.

" from the North West, or upon any land whatsoever  
 " which not having been ceded, or purchased by us as  
 " aforesaid, are reserved to the said Indians or any of  
 " them and we further declare it to be our royal will  
 " and pleasure for the present as aforesaid to reserve  
 " under our sovereignty, protection and dominion, for  
 " the use of the said Indians, all the lands and territo-  
 " ries not included within the limits of the said three  
 " new governments, or within the limits of the territo-  
 " ries granted to the Hudson's Bay company, as also  
 " all the lands and territories lying to the Westward of  
 " the sources of the rivers, which fall into the sea from  
 " the west and north west as aforesaid; and we do  
 " hereby strictly forbid, upon pain of our displeasure,  
 " all our loving subjects from making purchases or set-  
 " tlements whatsoever, or taking possession of any lands  
 " above reserved, without our special leave and licence  
 " for that purpose first obtained. And we do further  
 " strictly enjoin and require all persons whatever, who  
 " have either wilfully or inadvertently seated them-  
 " selves upon lands within the countries above de-  
 " scribed, or upon any other lands, which not having  
 " been ceded to, or purchased by us, are still reserved to  
 " the said Indians as aforesaid, to remove themselves  
 " from such settlements."

Can there be a stronger proof, that the King of England did not conceive he had acquired any just or legal title to the lands westward of the Allegany Mountain, either by the Lancaster deed or the treaty, of peace, which he had so recently made with the King of France?

In 1764, the King being desirous of having a boundary line established between the country of the Indians and the provinces of New York, Pennsylvania, Maryland and Virginia.----directed Sir William Johnson, Baronet,

Baronet, his superintendant of *Indian* affairs, to sound the *Six Nations* upon the subject, and know among other matters whether they would be willing to sell all the lands to the eastward of the river *Ohio*, as far as the *Allegany Mountain*, and make that river the boundary line to the *westward*.

On the 29th of April, 1765, a conference was opened at *Johnson Hall*, and ended the 5th of May, with the *Six Nations of Indians*, when Sir *William Johnson* addressed them as follows:

" You know the treacherous and cruel part acted by  
 " some of your people at *Loggs Town*, and about the  
 " *Ohio*, about two years ago. You then plundered  
 " numbers of the *traders*, who were supplying you  
 " with goods, &c. This has induced them to apply  
 " to me, and to desire I would lay before you their  
 " distresses, that you might give them a tract of land  
 " to compensate, in some measure, for their great  
 " losses. I need not tell you how incumbent it is up-  
 " on you to agree to their desire, as you must be all  
 " sensible they were ruined by some of your people in  
 " a time of peace, and when they were supplying your  
 " necessities. This conduct is sufficient to make the  
 " traders very shy of going towards your country, and  
 " therefore I think it indispensably your interest to  
 " grant this request, which, though it will be but a  
 " small reward, it will shew the world, that you repent  
 " of what is past, and like honest men are desirous  
 " of making some restitution for the damages you  
 " have committed. I expect you will, without delay,  
 give an answer, and I wish it may be a favourable one,  
 as it will be for your credit."

Sir *William Johnson* next acquainted the *Six Nations*, that the General (Sir *Jeffery Amherst*) had represented

to him " the necessity there is for the troops to have  
 " gardens and corn about the forts, and although it  
 " is the custom of all other places, that all the ground  
 " within cannon shot, should belong to the fort, yet  
 " he has such a regard for you, that he would not  
 " make any use of it without you were first made ac-  
 " quainted, and approved of it, &c. But as the gar-  
 " rison of *Fort Pitt* is larger than the rest, and a great  
 " way from our settlements, I have no doubt *but you*  
 " will give up a larger quantity of ground for the use  
 " of the soldiers, and if you agree to this, I am per-  
 " suaded they will look upon you in a much more fa-  
 " vorable light than formerly, so that I expect a speedy  
 " and agreeable answer."

" Brethren,

" The last but most *important* affair I have at this  
 " time to mention, is with regard to settling a *boun-*  
 " *dary* between you and the *English*. I sent a message  
 " some time ago to some of your nations, to acquaint  
 " you, that I should confer with you at this meeting  
 " upon it. *The King*, whose generosity and forgive-  
 " ness you have already experienced, being very desir-  
 " ous to put a *final end* to *disputes* between his people  
 " and you, *concerning lands, and to do* you strict jus-  
 " tice, has fallen upon the plan of a *boundary* between  
 " our *provinces* and the *Indians*, (which no white  
 " man shall dare to invade) as the best and surest me-  
 " thod of *ending such like disputes*, and securing your  
 " *property* to you, beyond a possibility of disturbance.  
 " This will, I hope, appear to you so reasonable and  
 " so just, on the part of the King, and so advan-  
 " tageous to you and your posterity, that I can have no  
 " doubt of your chearfully joining with me, in settling  
 " *such a division line*, as will be best for the advan-  
 " tage of both the white man and the *Indians*, and as  
 " shall

" shall best agree with the extent and increase of each  
 " province, and the *Governors* whom I shall consult  
 " upon that occasion, so soon as I am fully empowered,  
 " but in the mean time I am desirous to know in what  
 " manner you would choose to extend it, and what  
 " you will agree heartily to, and abide by in general  
 " terms:--- At the same time I am to acquaint you,  
 " that whenever the whole is settled, and that it shall  
 " appear you have so far consulted the increasing state  
 " of our people, as to make any *convenient cession* of  
 " ground, where it is most wanting, that then you  
 " will receive a considerable present in return for your  
 " friendship."

On the 3d of May, the *Six Nations* by the *Onondago*  
 speaker, made the following answer:

" Brother,

" We have heard all you said to us yesterday, and  
 " and we give you many thanks for your advice and  
 " directions to us, which we shall take due notice of.  
 " As we are willing to shew our good disposition by  
 " our actions, we shall come into every thing you pro-  
 " pose that is reasonable, and we hope it will render  
 " us more regarded by the *English*. These are *serious*  
 " articles, and we shall consult both Sachems and  
 " Warriors about them, and by to-morrow be able to  
 " answer you upon them; but with regard to what  
 " you spoke about the King's desire, that we should  
 " agree about a line between us and the *English*, we  
 " must desire to know of you, how you intended the  
 " line should go, and how far."

On the 4th of May, the same speaker again spoke  
 as follows:

" Brother,

" The chief *cause* of all the late wars was about lands.  
 " We saw the *English* coming towards us from all  
 " parts,

" parts, and they have cheated us so often, that we could not think well of it. We were afraid that in a little time you would be at our very castles. For this reason we thank the great King for his good intentions, and we hope he will make his people keep within bounds, which they have not yet done; we therefore agree, that a boundary shall be made between us."

On the 6th of May, the same speaker thus addressed Sir William Johnson.

" Brother

" We are now assembled to answer what you said yesterday, regarding the boundary line, &c. At length we have agreed together for ourselves, our wives and children to make a cession to the King, of the lands, we shall now describe, beginning at Owe-gi on the East branch of Susquehanna thence down the East side of the river to Shamokin (or Fort Augusta) and running up the West branch of Susquehanna, on the South side thereof and from thence to Kittanning or Adigo, on the Ohio, thence along and down the Ohio to the Cherokee river, and up the same to its head: And then they promised, that, "THE REQUEST OF THE TRADERS shall BE COMPLIED WITH, AND WE SHALL AGREE TO GIVE THEM SOME LANDS NEAR FORT PIT, and also to your desire, concerning some lands about the forts for the use of your garrisons,"

Sir William answered.

" As I only wanted to know your sentiments in general about a boundary, I am content the line remains for the present, as far as you recommended."

During these conferences between his Britannic Majesty's superintendant of Indian affairs, and the Six United Nations of Indians, the Delaware Tribe, sent deputies

deputies to the superintendant, for the purpose of establishing a peace, and the following is an extract, from the articles thereof.

" *Treaty of peace with the Delaware Nation, entered into by their deputies, before Sir William Johnson Baronet his Majesty's sole agent and superintendant of Indian affairs, in the Northern department of North America, &c. &c. &c.*

*Article the first.*

" That in consideration of the *Delawares*, sincere promises of future good behaviour, of their having delivered up to *Colonel Boquet* a large number of *English*, who were their prisoners, and of their chearfully according to the subsequent articles, and faithfully observing them forever hereafter, his Majesty is graciously pleased to pardon what hath passed, and they shall be once more received into the covenant chain of friendship with the *English*.

*Article the ninth.*

" That many of the *traders*, who were plundered, and severely treated by the *Delawares*, in 1763, having represented the great distresses, to which they are thereby reduced, and prayed relief; the *Delawares* are therefore to fall immediately on a method, for making them some restitution by a grant of lands, provided his Majesty shall approve thereof, and the *Six Nations*, first give their approbation.

Signed *William Johnson.*

*Killbuck or Beminco.*

*Kocksbwehemente.*

*Ariendamovky.*

*Squash Cutter."*

At a conference at *Johnson Hall*, on the 13th of July, 1765, with the *Mingo Indians*, &c.—Sir *William Johnson* explained to the *Shawneſſe*, *Delawares* and *Mingos*,

*Mingos*, the several articles of the treaty subscribed by *Killbuck, &c.* (in page 63) on behalf of the *Delawares*, “with all which they were pleased, and unanimously agreed to subscribe the same.”

The foregoing application made by Sir *William Johnson* to the *Six Nations* for a retribution in lands to the suffering traders; their answer, and the above articles of the treaties of peace, on the part of the *Delawares*, *Shawneffe* and *Mingo* Indians, &c. are recorded in the office of the Lords commissioners for trade and plantations, and also in the King’s council office *London*.

In February, 1767, they met with the entire approbation of the then Secretary of State, the Earl of *Shelburne*, and his Lordship signified the same to Sir *William Johnson*, Baronet.

Here it may not be useless to remark, that the *Che-rokee* and *Creek* Nations of Indians, being indebted to the *English* Indian traders in greater sums than they could pay in peltries, and being desirous to discharge their debts, they, at a treaty held in May, 1773, at *Augusta*, in the province of *Georgia*, with Mr. *Stuart*, Superintendent of Indian affairs for the southern department, and Sir *James Wright*, Baronet, then Governor of that province, fixed a boundary line by treaty and sold to the King of *England* all the territory comprehended within certain limits, described in the deed of cession; and at the same time ceded and granted to the said King a considerable tract of country upon the frontiers of *Georgia*, on purpose that the same should be sold, and the proceeds of such sale be appropriated to the payment of their debts to these traders; and the Governor and Council of *Georgia* were appointed by his Britannic Majesty to sell the lands in question, to settle the respective claims of the traders, and discharge the same out of the produce of such sale, conformable to the design of the Indian grantors.

In

In 1766, the King's subjects presuming to settle the lands over the *Alleghany Mountain*, while the *Indians* were not paid for them, as they expected they should have been, in consequence of the proposed *boundary line*, and Sir William Johnson's speech to them in April, 1765,----they became unfriendly, killed many of the King's subjects, and threatened a general war. To prevent this public calamity, a detachment from the King's 42d regiment, then at Fort Pitt, was sent, by order of General Gage, to remove the settlers at *Red Stone Creek*, *Cheat River*, &c. but the exertions of this detachment were ineffectual, and the settlers remained there.

On the 7th of December 1767, General Gage wrote the Governor of *Pennsylvania*, " that the accounts I  
 " have received from all quarters are full of intelligence  
 " of the dissatisfaction of the *Indians*. Sir William  
 " Johnson is apprehensive of an immediate rupture with  
 " them. The insults they have received from the  
 " frontier people, chiefly those of *Virginia* and the ob-  
 " stinacy of the people, who persist to settle on their  
 " lands, not only without their consent, but in con-  
 " tradiction to their warmest remonstrances and the  
 " endeavours that have been used to remove them,  
 " I perceive to be the most immediate cause of their  
 " discontent."

On the 5th of January 1768 the Governor of *Pennsylvania* acquainted the general Assembly of that Province, with the contents of general Gage's letter and said, that as the steps hitherto taken both by proclama-  
 tions issued in pursuance of the King's commands, and threats of exerting a military force, had proved ine-  
 fectual, he therefore called upon the Assembly to re-  
 medy the evil, as far as was in their power. The Af-  
 sembly, in a message to the Governor acquainted him,

" We are assured from good information, that a general boundary, between the natives and these colonies, has been some time past negotiated with them by Sir William Johnson, in obedience to his Majesty's orders; that the boundary agreed on will be far distant from our frontier settlements, and a large tract of country within it will thereby be ceded to his Majesty for a valuable consideration; that as some time has elapsed, since the agreement was made with the Indians, and in the mean time the people on the frontiers have been encroaching on their lands, while the boundary remains unconfirmed, and the Indians unsatisfied for their country, they are become very uneasy, and jealous there is no design to ratify and confirm it: To obviate which cause of their discontent, and effectually to establish between them, and his Majesty's subjects, a durable peace, we are of opinion, that a speedy confirmation of the boundary, and a just satisfaction made to them for their lands, on this side of it, are absolutely necessary."

On the 19th of January, 1768, the Speaker of the Assembly and the Committee of Correspondence of Pennsylvania wrote, by order of the House, to Richard Jackson and Benjamin Franklin, Esqrs. Agents for the province, at the Court of Great Britain, " That the non establishment of a boundary negotiated about three years ago, by his Majesty's orders to Sir William Johnson, between these colonies and the Indian country, is a cause of Indian jealousy and dissatisfaction; the delay of the confirmation of the boundary, the natives have warmly complained of, and although they have received no consideration for the lands agreed to be ceded to the crown, on our side of the boundary, yet that its subjects are daily settling and occupying these very lands."

On

On the 6th of May, 1768, the *Six Nations* made a speech at Fort Pitt, to the King's Deputy Superintendant of Indian affairs, and said:

Brother,

It is not without grief, that we see our country settled by you, without our knowledge or consent, and it is a long time since we first complained to you of this grievance. They subjoined, "The settlers must be removed from our lands, as, *we look upon it, they will have time enough to settle them, when you have purchased them, and the country becomes yours.*"

On the 31st of May, 1768, the General Assembly of Virginia being met, the President of his Majesty's Council (*John Blair, Esq;*) opened the sessions with the following speech:

" Gentlemen of the Council, Mr. Speaker, and  
" Gentlemen of the House of Burgesses,

" Our late worthy Governor having designed to  
" meet you here at this time, the reasons of that his  
" intention having been reconsidered by me in coun-  
" cil, and the objects for your consideration he had to  
" lay before you, having been judged to be of such  
" importance to the honour and service of his Majesty;  
" to the security, ease and happiness of the people, that  
" I was advised (as the administration devolved on  
" me) to renew the proclamation for your meeting.

" By letters from his Excellency General *Gage*,  
" Commander in Chief of his Majesty's forces, and  
" from Sir *William Johnson*, Superintendant of Indian  
" affairs, (which I shall cause to be laid before you)  
" it will appear, that a set of men regardless of the  
" laws of natural justice, unmindful of the duties they  
" owe to society, and in contempt of royal proclama-  
" tions, have dared to settle themselves upon the lands  
" near Red-Stone Creek and Cheat River, WHICH ARE

THE

" THE PROPERTY OF THE INDIANS; and notwithstanding the repeated warnings of the danger of such lawless proceedings, and the strict and spirited injunctions to them to desist, and quit their unjust possessions, they still remain unmoved, and seem to defy the orders and even powers of government."

As soon as *Richard Jackson* and *Benjamin Franklin*, Esqrs. received the foregoing instructions from the General Assembly of *Pennsylvania*, (p. 66) they waited on the *British Secretary of State*, and shewed the necessity of immediate orders being sent to the Superintendent of Indian affairs for finishing the boundary line, which had been begun in the year 1764.

In the spring of the year 1768, *Sir William Johnson* received the King's commands and instructions to complete the purchase of the lands from the *Allegany Mountain* to the River *Ohio*; &c. and accordingly he gave the earliest notice thereof to the governments of *Virginia*, *Pennsylvania*, *New Jersey*, &c. and to the *Six Nations* and the *Delawares*, and other *Indians* residing upon the river *Ohio*, and appointed a Congress to be held with them in the autumn, (for the purpose of carrying the King's orders into execution) at *Fort Stanwix*, in the province of *New York*.

In December, 1768, *Arthur Lee*, Esq; late Commissioner to the Court of *France*, from the *United States of North America*, presented a petition to the King of *England* in Council, praying, in the following words, on behalf of himself and forty-nine other gentlemen: " That your Majesty would grant to his petitioners, to be fifty in number, by the name of the *Mississippi Company*, two millions and five hundred thousand acres of land, in one or more surveys to be located or laid off between the *thirty-eighth* and *forty-second degrees* of north latitude, the *Allegany Mountain* to the

" the eastward, and thence westward to the dividing line  
" (the running of which your Majesty has been lately  
" pleased to order) and that your petitioners shall  
" have liberty of holding these lands twelve years, or  
" any greater number that your Majesty shall approve  
" (after survey of them be made and returned) clear  
" of all imposition money, quit rents or taxes; and  
" that your petitioners shall be obliged to seat the said  
" lands within twelve years, with two hundred fami-  
" lies at least, if not interrupted by the Savages, or  
" some foreign enemy, and return the survey thereof  
" to such office as your Majesty shall be pleased to direct,  
" otherwise to forfeit the grant.

" Your petitioners humbly hope, that your Ma-  
" jesty may be graciously pleased to grant these favor-  
" able terms in consideration of the heavy charges,  
" great expence, dangers, hardships and risques they  
" must necessarily incur in the exploring, surveying  
" and settling THIS DISTANT COUNTRY; and be-  
" cause it appears from reason and experience, that  
" large tracts of land taken up by companies, may be  
" retailed by them to individuals much cheaper than  
" the latter can obtain them from the crown, embar-  
" rassed as such individuals must be with the charges  
" arising from the solicitation of patents, making sur-  
" veys, and other contingent expences, together with  
" the difficulty the poorer sort are under from their  
" ignorance of the proper methods to be pursued, as  
" well as their inability to advance ready money for  
" such purposes; whereas from companies, they have  
" only to receive their conveyances without any pre-  
" vious expence, and are indulged with credit till their  
" industry enables them to make payments; a method  
" so encouraging, that it cannot fail of answering the  
" intention of speedily populating this your Majestys  
" territory,

" territory, so as to be profitable to the crown, and  
 " useful to the state. And though attempts to settle in  
 " this way, have sometimes failed in the hands of gen-  
 " tlemen possessed of affluent fortunes, in consequence  
 " of an indolence and inattention frequently attending  
 " persons in such circumstances, especially when not  
 " excited by the prospect of immediate and considera-  
 " ble profit; yet the greater part of the present advent-  
 " urers being of good families, and considerable in-  
 " fluence in the countries where they live, though  
 " possessed of but moderate estates, are induced, from  
 " the goodness of the soil and climate of the country,  
 " beyond the Mountains, to believe, that by a proper  
 " application of their money and industry, they shall  
 " acquire a sure and happy provision for their chil-  
 " dren; which pleasing prospect, animated with a view  
 " of public utility, will conduct all their affairs with  
 " that spirited assiduity, which, only in matters of  
 " danger and difficulty, can insure success. In pur-  
 " suance of this, several of the members are deter-  
 " mined to be themselves among the first settlers; the  
 " dearness and preoccupancy of the lands, WITHIN  
 " THEIR RESPECTIVE COLONIES, rendering it im-  
 " practicable to make a proper landed provision for  
 " their numerous families; a circumstance which be-  
 " gins already to restrain early marriages, and there-  
 " fore speedy population. In consideration of the  
 " reasons here offered, your petitioners most humbly  
 " pray your Majesty will be graciously pleased to grant  
 " their humble request and as in duty bound your pe-  
 " titioners will ever pray.

The Hon. Presley Thornton. Stephen Sayre.

The Hon. Benedict Calvert. Richard Henry Lee.

Thomas Ludwell Lee.

Col. George Washington.

Thomas Cumming.

Colonel Adam Steven.

Francis

Francis Lightfoot Lee.	Thomas Simpson.
Captain William Fitzhugh.	William Flood.
Francis Thornton.	William Borekenborough.
Anthony Stuart.	Rev. Hen. Addison, A.M.
William Lee.	Robert Woodrop.
Arthur Lee, M D.F.R.S.	John Baylor.
J. Augustine Washington.	Bernard Moore.
Henry Fitzhugh.	Ralph Wormeley.
Samuel Washington.	Warner Lewis, jun.
W. Fitzhugh of Marmion.	Mann Page.
William Breret.	John Alexander.
W. Fitzhugh of Somerset.	Cuthbert Bullitt.
Richard Parker.	Henry Royer.
William Booth.	John Turberville.

December, 1768. Arthur Lee, Agent.

On the back of this petition is endorsed these words  
and figures: 16th December, 1768.

Read and referred to a Committee.

9th March, 1769.

Read at the Committee, and referred to the  
Board of Trade.

We shall make but one short observation upon this petition. It speaks for itself, and shews, that the respectable petitioners (mostly *Virginians*) were not of the number of those gentlemen in *Virginia*, who now, without the least reason or justice, assert,---that the "*distant country*," over the *Allegany Mountain*, is within that government.

On the 24th of October, 1768, the *Congress* at Fort Stanwix was opened. Present.  
The Honorable Sir *William Johnson*, Baronet, his  
Majesty's Superintendant of Indian affairs.  
His Excellency *William Franklin*, Esq; Governor of  
New Jersey.

Thomas

*Thomas Walker, Esq; Commissioner for the colony  
of Virginia.*

*Hon. Frederick Smith, Chief Justice of New Jersey.  
Richard Peters, } Esqrs. of the Council of Pennsyl-  
} vania.  
James Tilghman,*

*George Croghan, } Esqrs. Deputy Agents of Indian  
Daniel Claus,* } affairs.

*Guy Johnson, Esq; Deputy Agent and acting as Secreta-  
ry, with sundry Gentlemen from the different colonies.*

*John Butler, Esq;*

*Mr. Andrew Montour,* } Interpreters for the Crown.  
*Philip Philips,*

*Indian Chiefs present.*

<i>Mohawks.</i>	<i>Onandagoes.</i>	<i>Senecas.</i>
<i>Abraham.</i>	<i>The Bunt.</i>	<i>Gaustrax.</i>
<i>Kanadagaya.</i>	<i>Tewaruit.</i>	<i>Odengot, &amp;c.</i>
<i>Kendrick.</i>	<i>Diaquanda.</i>	
<i>Aroghiaecka.</i>	<i>Tawashughts,</i>	
<i>Kayenqueregoa.</i>	<i>&amp;c. &amp;c. &amp;c.</i>	
<i>Tobarihoga.</i>		
<i>Anohario, &amp;c.</i>		

<i>Oneidas.</i>	<i>Cajugas.</i>	<i>Tuscaroras.</i>
<i>Ganaghquieson.</i>	<i>Tagaaia.</i>	<i>Squareefera.</i>
<i>Nicholasera.</i>	<i>Shanarady.</i>	<i>Kanigot.</i>
<i>Senughsis.</i>	<i>Atrawawna, &amp;c.</i>	<i>Tyagawehe, &amp;c.</i>
<i>Gajuheta.</i>		
<i>Tagawaron, &amp;c.</i>		

<i>Shawneſe.</i>	<i>Delawares.</i>
<i>Benevifſica.</i>	<i>Killbuck.</i>
	<i>Turtleheart.</i>

The whole Assembly being seated, Mr. Walker rose, and delivered to Sir William Johnson his authority to sit and act as *Commissioner for Virginia.*

" JOHN

" JOHN BLAIR, ESQ. PRESIDENT OF HIS MAJESTY'S COUNCIL, AND COMMANDER IN CHIEF OF THE COLONY AND DOMINION OF VIRGINIA,  
" To THOMAS WALKER, ESQ.

" BY virtue of the power and authority to me committed, as President of his Majesty's Council, and Commander in Chief in and over this colony and dominion of Virginia, I do hereby appoint you the said Thomas Walker, to be Commissioner of Virginia, TO SETTLE a boundary line between this colony, and the colonies of Pennsylvania and Maryland, and the several nations of Indians concerned. You are required to attend at a Congress to be held for that purpose, under the direction of Sir William Johnson, agreeable to his Majesty's instructions, when you are to pay a due regard to the interest of his Majesty, and such instructions as you shall receive from me.

" Given under my hand and seal of the colony at Williamsburg, this 17th of June, and in the eighth year of his Majesty's reign, anno domini 1768.

JOHN BLAIR."

Messrs. Peters and Tilghman being likewise admitted as Commissioners for Pennsylvania, and Messrs. Wharton and Trent of the same province, appearing, delivered in an account of the traders losses in 1763, together with their powers of attorney for obtaining a retribution in lands, pursuant to an article of the treaty of peace in 1765.

Sir William Johnson then, by Abraham, a Chief of the Mohawks, addressed the Indians in the following manner:

" Brethren,

" I take you by the hand, and heartily bid you all welcome to this place, where I have kindled a council fire for affairs of importance. The Governor of New Jersey, and the Commissioners of Virginia and

" *Pennsylvania*, do likewise welcome you here. Lieutenant Governor Penn came hither, and waited a considerable time, but was at length, by business, obliged to return home, leaving these gentlemen commissioners on behalf of *Pennsylvania*. " "

Brethren,

Hearken to me, who have good words to speak to you, such as are for the benefit of your whole confederacy, and of your children yet unborn.

You all remember, that three years ago I signified to you *his Majesty's desire to establish a boundary line* between his people and yours; and that we then agreed together, how some part of that line should run, whenever the same came to be settled.

You all, I am hopeful, recollect the reasons I then gave you for making *such a boundary*; nevertheless, I shall again repeat them: You know, brethren, that the encroachments upon your lands have been always one of your principal subjects of complaint; and that, so far as it could be done, endeavours have not been wanting for your obtaining redress. But it was a difficult task, and generally unsuccessful; for, although the provinces have bounds between each other, there are no certain bounds between them and you; and thereby, not only several of our people, ignorant in Indian affairs, have advanced too far into your country, but also many of your own people, through the want of such a line, have been deceived in the sales they have made, or in the limits they have set to our respective claims. This, brethren, is a sad case, which has frequently given us much trouble, and turned many of your heads; but it is likely to continue so, until some bounds are agreed to, fixed upon, and made public between us. The great, the good King of *England*, my master, whose friendship and tender regard for your interests I wish you may ever hold in remembrance, has,

has, amongst other instances of his goodness, after long deliberation on some means for your relief, and for preventing future disputes concerning lands, at length resolved upon fixing a general boundary line between his subjects and you, and that in such a manner as shall be most agreeable to you; in consequence of which, I have received his royal commands to call you together for the establishment thereof; and after conferring with the governments interested hereupon, you now see before you the Governor of the Jerseys, the commissioners on behalf of Aferegoa, governor of Virginia, and commissioners from Pennsylvania, in order to give you the strongest assurances on behalf of their respective governments, of their resolutions to pay due regard to what shall be now entered into: the presence of so many great men will give a sanction to the transaction, and cause the same to be known as far as the English name extends. His Majesty has directed me to give you a handsome proof of his generosity, proportioned to the nature and extent of what lands shall fall to him, Upon the whole, I hope that your deliberations will be unanimous, and your resolutions such, as his majesty may consider as proofs of your gratitude for all his favours.

*A fine new Belt.*

Brethren,

The importance of this affair now before us, requires the most serious attention, I will not burthen you with any other subject until this is generally settled; and therefore we shall adjourn, that you may have time to think of it, and come fully prepared to give an agreeable answer.

Then Abraham, a Chief of the Mohawks, after repeating what Sir William Johnson had said, addressed him thus,

Brother,

We give you thanks for what you have said to us at this

this time; it is a weighty affair, and we shall, agreeable to your desire, take it into our most serious consideration. We are glad that so many great men are assembled to bear witness of the transaction; and we are now resolved to retire and consult on a proper answer to be given to all you have said; and so soon as we have agreed upon it, we shall give you notice, that we may again assemble and make it known to you; and we are all much obliged to you, that you have directed us to attend to this great affair alone at this time, that our minds might not be burthened or diverted from it by attending to any thing else.

*Fort Stanwix October 31, 1768.*

A deputation from the *Six Nations* waited upon Sir *William Johnson* and informed him, that a *Chief* and *warrior* of each *Nation* would attend him and deliver their *final* resolves which should be made *public*, to morrow. A map being laid before them, they observed that what they had to say, were the *final* resolves of all the *Nations*, and added that they would, agreeable to their just right, begin the *line* at the *Cherokee river*, &c. (*Vide*. The *boundaries* in their grant to the King) this they said, they delivered as their *final determinations*, *subject to several conditions* for the security of their possessions; and engagements entered into.

AT a general Congress held at *Fort Stanwix* with the *Six Nations* and other *Indians*, on Tuesday November the 1st, 1768.

PRESENT, as at the former Meeting.

The *Indians* being all seated, they desired to know, whether Sir *William* was prepared to hear them; and on being answered in the affirmative, the *speaker* stood up, and spoke as follows;

Brother,

We are hopeful that you will not take it amiss that we have delayed till now our public answer on the subject

ject you recommended to us; this was a great and weighty matter, requiring long deliberation, and should not be undertaken lightly; we have accordingly considered it, and are now come to give you our *final* resolutions thereon, to which we beg your attention.

Brother,

We remember, that on our *first* meeting with you, when you came *with your ship*, we kindly received you, entertained you, and entered into an alliance with you, though we were then great and numerous, and your people inconsiderable and weak; and we know that we entered into a covenant chain of bark with you, and fastened your ship therewith; but being apprehensive the bark would break, and your ship be lost, we made one of iron, and held it fast, that it should not slip from us; but perceiving the former chain was liable to rust, we made a silver chain to guard against it. Then Brother, you arose, renewed that chain, which began to look dull, and have for many years taken care of our affairs by the command of the great King, and you, by your labours, have polished that chain; so that it has looked bright, and is become known to all nations; for all which, we shall ever regard you, and we are thankful to you, in that you have taken such care of these great affairs, of which we are always mindful, and we do now, on our parts, renew and strengthen the covenant chain, by which we will abide, so long as you shall preserve it strong and bright on your part.

*A Belt.*

Then, after repeating all that had been said concerning the line, the speaker proceeded.

Brother.

We have long considered this proposal for a boundary between us, and we think it will be of good consequence, if you, on your parts, pay a due regard to it; and we, in consequence thereof, have had fundry meetings amongst ourselves

selves and with you; and from all that you have said to us thereon, we have at length come to a final resolution concerning it, and we hope that what is now agreed upon shall be inviolably observed *on your parts*, as we are determined it shall be *on ours*; and that no further attempts will be made *on our lands*, *but that this line be considered as final*; and we do now agree to the line we have marked upon your map, now before you, on certain conditions, on which we have spoken, and shall say no more; and we desire that one article of this our agreement be, that none of the provinces, or their people shall attempt to invade it, UNDER COLOUR OF ANY OLD DEEDS, or other pretences whatsoever; for in many of these things we have been imposed on, and therefore we disclaim them all. Which bounds, now agreed to, we begin on the Ohio, at the mouth of the cherokee river, which is our just right; and from thence we go up, on the south side of the Ohio, to Kittanning, above Fort Pitt, from thence a direct line to the nearest fork of the west branch of Susquehanna, thence through the Allegany mountains, along the south side of the said west branch, till we come opposite to the mouth of the creek called Tiadaghton; thence across the west branch, and along the east side of that creek, and along the ridge of Burnets hills, to a creek called Awandae, thence down the same to the east branch of Susquehannah; and across the same, and up the east side of that river to Owegy; from thence eastward to Delaware river, and up that river to opposite where Tianaderrah falls into Susquehannah; thence to Tianaderrah, and up the west side thereof, and its west branch, to the head thereof; thence by a straight line to the mouth of Canada Creek, where it empties itself into Wood creek, at the end of the long carrying place beyond Fort Stanwix. And this we declare to be our final resolves, AND WE EXPECT THAT THE CONDITIONS OF THIS OUR GRANT WILL BE OBSERVED.

*A Belt.*

Brother,

Brother,

Now as we have made so large a cession to the king of such a valuable and extensive country, *we do expect it, as the terms of our agreement, that strict regard be paid to all our reasonable desires.* We do now, on this case, on behalf and in the name of *all our warriors of every nation, CONDITION, that our warriors shall have the liberty of hunting throughout the country; as they have no other means of subsistence, and as your people have not the same occasions or inclinations; that the white people be restricted from hunting on our side of the line, to prevent contention between us.*

*A Belt,*

Brother,

By this Belt we address ourselves to the great King of England, through you our superintendant, in the name and in behalf of all the Six Nations, Shawneſſe, Delawares, and all other our friends, allies, and dependants: we now tell the king, that we have given to him a great and valuable country; and we know, that what we shall now get for it must be far short of its value: we make it a condition of this our agreement concerning the line, that his majesty will not forget or neglect to shew us his favour, or suffer the chain to contract rust; but that he will direct those who have the management of our affairs to be punctual in renewing our ancient agreements: That as the Mohawks are now within the line which we give to the King, and that these people are the true old heads of the whole confederacy, their several villages and all the land they occupy, unpatented about them, as also the residences of any other of our confederacy affected by this cession, shall be considered as their sole property, and at their disposal, both now and so long as the sun shines; and that all grants or engagements they have now or lately entered into, shall be

be considered as independant of this boundary;\* so that they, who have so little left, may not lose the benefit of the sale of it; but that the people, with whom they have agreed, may have the land. We likewise further condition, on behalf of all the Six Nations, and of all our allies, friends and nephews, our dependants, that as we have experienced how difficult it is to get justice, or to make our complaints known, and that it is not in the power of our superintendant to take care of our affairs in different places without the King's help, that his Majesty will give him help and strength to do us justice, and to manage our affairs in a proper manner. We all know the want of this, and we make it a point of great consequence, on which this our present agreement is to depend, and without which affairs will go wrong, and our heads may be turned.

Brother,

We likewise desire that as we have now given up a great deal of lands within the bounds that Mr. Penn claimed a right of buying, that he may, in consequence of the agreement† now entered into between us, enjoy what we have given within them limits. And as we know, that *Lydius* of *Albany* did, in the name of several persons, lay claim to lands in *Pennsylvania*, which we know to be unjust; and that the deeds he pretends a right to, were invalid, we expect that no regard will be paid to them, or any such claims, now or hereafter; as we have fairly sold them to the proprietors of *Pennsylvania*, to whom alone we shall sell lands within that province; and we shall now give them a deed for that and other lands there.----And in order to shew that we love justice, we expect the traders, who suffered by some

\* This related to lands on the Susquehannah, &c.

† The proprietors of *Pennsylvania* bought of the Six Nations, a large tract of country at this congress, and on receiving their deed of conveyance for the same, the said proprietors paid the Six Nations 10,000 Spanish milled dollars; being the consideration money for the said tract.

of our dependants in the wars five years ago, may have a grant for the lands we now give them down Ohio, as a satisfaction for their losses;----and as our friend Mr. Croghan long ago got a deed for lands from us, which may now be taken into Mr. Penn's lands; Should it so happen, we request that it may be considered, and that he may get as much from the King somewhere else, as he fairly bought it.---And as we have given enough to shew our love for the King, and make his people easy, in the next place, we expect, THAT NO OLD CLAIMS, which we disavow, or new encroachments, may be allowed of.\*

Brother,

We have now gone through this matter, and we have shewn ourselves ready to give the King whatever we could reasonably spare; we, on our parts express our regard for him, and we hope for his favour in return.---Our words are strong and our resolutions firm, and we expect that our requests will be complied with, inasmuch as we have so generously complied with all that has been desired, as far as was consistent with our interest.

*A Belt.*

At a general Congress held at Fort Stanwix with the Six Nations, and other Indians, &c. on Friday, November 4, 1768,---Sir William Johnson addressing himself to them, spoke as follows:

Brothers,

I am glad the boundary is at length agreed upon; and as I have great reason to think it will be duly observed by the English, I recommend it to you to preserve it carefully in remembrance; to explain it fully to those that are absent, and to teach it to your children,

L

dren,

\* The Six Nations here farther make it a condition, that no old claims should be allowed. This was expressly made to remove all pretensions on the part of Virginia, to the lands westward of the Allegany Mountain under the Lancaster deed; as they repeatedly said, they had been cheated, and deceived at the treaty held at Lancaster 1744.

dren, &c. I now give you this belt to strengthen, ratify and confirm the boundary, and all transactions necessary thereto.

*A Belt.*

Brothers,

I consider your good intentions towards the traders who sustained the losses, and your desire to fulfil all your engagements, as instances of your integrity. I wish that you may, on your parts, carefully remember and faithfully observe the engagements, you have now as well as formerly entered into with the English, and that you may every day grow more sensible how much it is your interest to do so.

Sir William Johnson addressing himself to the Governor of New Jersey and the Commissioners, said---

Gentlemen,

Agreeable to his Majesty's intentions signified to me by the Secretary of State, and for the satisfaction of the several nations here assembled, I take the liberty to recommend it strongly to your several provinces, to enact the most effectual laws for the due observance of the line, and the preventing all future intrusions, as the expectation thereof, and the reliance the Indians have on your justice, from the assurance I have given them on that head, have proved great inducements to the settlement of the line now established between the colonies and them.

To which the Governor and Commissioners answered,

Nothing should be wanting on their parts to the obtaining such security for the boundary as was deemed necessary, on their return to their respective colonies.

Grant from the Six United Nations to William Trent,  
and others.

TO all people to whom these presents shall come greeting, Know ye, that we Abraham a Mohawk chief, Sennghois an Oneida chief, Saquarifera a Tuscarora

rora chief, Chenaugheata chief of the Onondago council, Tagaaia a Cayuga chief, and Gaustarax a Seneca chief; chiefs and sachems of the Six United Nations, and being and effectually representing all the tribes of the said Six United Nations, send greeting:

Whereas Robert Callender, David Franks, Joseph Simons, Levy Andrew Levy, Philip Boyle, John Baynton, Samuel Wharton, George Morgan, Joseph Spear, Thomas Smallman, Samuel Wharton administrator of John Welch, deceased; Edmund Moran, Evan Shelby, Samuel Postlethwait, John Gibson, Richard Winston, Dennis Crohon, William Thompson, Abraham Mitchel, James Dundas, Thomas Dundas, and John Ormsby; in and by their several and respective letters or powers of attorney, duly signed, sealed, and delivered by them, and now produced, interpreted, and explained to us; have constituted, nominated, and appointed William Trent, of the county of Cumberland, and province of Pennsylvania, merchant, their lawful attorney and agent, to ask, solicit, demand and receive from the sachems, counsellors and warriors of the said Six United Nations, a grant of a tract of land, as a compensation, satisfaction, or retribution, for the goods, merchandize, and effects of the said William Trent, and the traders aforesaid, which the Shawneſſe, Delaware, and Huron tribes, tributaries of the said Six Nations, (contrary to all good faith and in violation of their repeated promises of safety and protection to their persons, servants, and effects, whilst trading in their country) did in the spring of the year One thousand seven hundred and sixty three, violently seize upon, and unjustly appropriate to their own use:

And whereas we are now convened in full council, by order of our father, the king of Great Britain, France, and

*and Ireland, defender of the faith, &c. at Fort Stan-wix, in the province of New York, in order to agree for, ascertain, and finally fix and settle a permanent and lasting boundary line between the hunting country, which we, at the conference aforesaid, SHALL and WILL reserve for ourselves, our children, and our tributaries, and the territories of the said king of Great Britain:*

*And whereas application was formerly made to the said Six United Nations by Sir William Johnson, baronet, at the requisition of the aforesaid traders, who had sustained and suffered the losses aforesaid, for a retribution for the same, which the said Six United Nations promised and agreed to, whosoever he, the said Sir William Johnson, baronet, should be empowered by his said majesty, the king of Great Britain, to establish the boundary line aforesaid:*

*And whereas the said Sir William Johnson, baronet, has now at this present congress, reminded the said Six United Nations of their said promise; and at the earnest desire of the aforesaid traders, by their said attorney, strongly recommended to the said Six United Nations, to make them a restitution, by a grant of a tract of land to his said majesty, the king of Great Britain, his heirs and successors; to and for the only use, benefit, and behoof of the said William Trent, in his own right, and as attorney as aforesaid; all which the said Six United Nations having taken into their consideration, and being heartily disposed to agree thereunto, as an instance of their justice and concern for the said losses; do therefore by these presents signify, publish, and declare, that notwithstanding the grant and gift hereby made and given by them unto his said majesty the king of Great Britain, and so forth; [to and for the only use, benefit, and behoof of the said William Trent, in his own right,*

right, and as attorney as aforesaid] will be included within the cession, sale, and boundary line, which the said Six United Nations shall and will make, sell and grant to the said king of Great Britain, at the conference aforesaid, now holden at Fort Stanwix aforesaid, by the said Sir William Johnson, baronet:

Yet nevertheless, the said Six United Nations have neither asked, demanded, nor received from him the said Sir William Johnson, baronet, nor from any other person or persons in behalf of the said king of Great Britain, any consideration for the hereby given and granted premises, neither shall nor will the said Six United Nations, nor their heirs nor descendants, (and by these presents, they, the said Six United Nations, wholly and entirely interdict and prohibit them from so doing) demand, nor receive from the said king of Great Britain, nor from his successors, nor from his or their ministers or servants, any consideration whatsoever or howsoever, for the hereby granted, bargained, or now given premises, or any part, purpart, or parcel thereof, the same being their own voluntary act and deed, solely, and bona fide designed and intended by them as a compensation, satisfaction and retribution for the losses sustained by the said William Trent, and the Indian traders aforesaid, by the depredations of the Shawnee, Delaware, and Huron tribes of Indians aforesaid, in the aforesaid year One thousand seven hundred and sixty-three :

Now this indenture witnesseth, That we the said Abraham, Sennghois, Saguarisera, Chenaugheata, Tagaia, and Gaustrarax, (chiefs and sachems of the said Six United Nations, and being and effectually, as aforesaid, representing all the tribes of the Six United Nations) for and in consideration of the sum of eighty-five thousand nine hundred and sixteen pounds, ten shillings and

and eight pence, lawful money of the province of New York, (the same being the amount of the goods and merchandize, which were unjustly seized and taken, as aforesaid, by the Shawneſſe, Delaware, and Huron tribes of Indians aforesaid, from the said William Trent, Robert Callender, David Franks, Joseph Simons, Levy Andrew Levy, Philip Boyle, John Baynton, Samuel Wharton, George Morgan, Joseph Spear, Thomas Smallman, Samuel Wharton administrator of John Welch, deceased; Edmund Moran, Evan Shelby, Samuel Postlethwait, John Gibson, Richard Winston, Dennis Crohon, William Thompson, Abraham Mitchell, James Dundas, Thomas Dundas, and John Ormſby, in the aforesaid year, One thousand seven hundred and sixty-three, whereof just and fair accounts have, on oath and affirmation, been produced, interpreted, and explained to us; and which, at our desire, are now lodged and deposited with the said Sir William Johnson, baronet: And for and in consideration of the sum of five ſhillings, lawful money aforesaid, to us in hand paid by the said William Trent, the receipt whereof we do hereby acknowledge, do give, grant, bargain, and sell unto his said majesty, his heirs and successors, to and for the only use, benefit, and behoof of the said William Trent, in his own right, and as attorney aforesaid; all that tract or parcel of land, beginning at the southerly side of the mouth of Little Kenhawa Creek, where it empties itself into the river Ohio, and running from thence south east to the Laurel Hill, thence along the Laurel Hill until it strikes the river Monongehela, thence down the stream of the said river Monongehela, according to the several courses thereof, to the southern boundary line of the province of Pennsylvania; thence westerly, along the course of the said province boundary line, as far as the same ſhall extend, and from

from thence by the same course to the river Ohio, thence down the said river Ohio, according to the several courses thereof, to the place of beginning; together with all and singular the trees, woods, under-woods, mines, minerals, ores, waters, water-courses, fishings, fowlings, huntins, profits, commodities, advantages, rights, liberties, privileges, hereditaments, and appurtenances whatsoever, to the said tract or parcel of land belonging, or in any ways appertaining; or which now are, or formerly have been accepted, reputed, taken, known, used, occupied, or enjoyed, to or with the same, or as part, parcel, or member thereof, and the reversion and reverions, remainder and remainders, rents, issues and profits, of all and singular the said premises above mentioned, and every part or parcel thereof, with the appurtenances: And also all the estate, right, title, interest, property, claim and demand whatsoever; whether native, legal or equitable, of us the said Indians, and each and every of us, and of all and every other person and persons whatsoever, of or belonging to the said Nations, of, in, to, and out of, all and singular the premises above mentioned; and of, in, to, and out of, every part and parcel thereof, with the appurtenances; *to have and to hold*, all and singular the said tract, parcel and parcels of land, given, granted and bargained premises, with their appurtenances, unto his said majesty, king George the Third, his heirs and successors, *but to and for the only use, benefit, and behoof of the said William Trent, in his own right, and as attorney aforesaid, his heirs and assigns for ever:* And the said Abraham, Sennghois, Saquareisera, Chenaugheata, Tagaaia, and Gaustarax, for themselves, and for the *Six United Nations*, and all and every other nation and nations, tribes, tributaries, and dependants on the said *Six United Nations*, and

and their and every of their posterities, the said tract and parcel of land and premises, and every part thereof, against them the said Abraham, Sennghois, Saquarifera, Chenaugheata, Tagaaia, and Gaustrarax; and against the said *Six United Nations*, and their tributaries and dependants, and all and every of their posterities; to his said majesty, his heirs and successors, *but to and for the only use, benefit, and behoef of the said William Trent, in his own right, and as attorney aforesaid, his heirs and assigns, shall and will warrant, and for ever defend by these presents*: In witness whereof, *we, the said chiefs and sachems, in behalf of ourselves respectively, and in behalf of the whole Six United Nations aforesaid, have hereunto set our hands and seals, in the presence of the persons subscribing as witnesses hereunto, at a congress held at Fort Stanwix aforesaid, this third day of November, in the ninth year of his majesty's reign, and in the year of our Lord one thousand seven hundred and sixty-eight.*

*Sealed and delivered in }  
the presence of us, }  
William Franklin, governor  
of New Jersey.*

*Frederick Smyth, chief justice of New Jersey.*

*Thomas Walker, commissi-  
oner for Virginia.*

*Richard Peters, { of the  
James Tilghman, { council  
of Pennsylvania*

*John Skinner, capt. in the  
70th regiment.*

*Joseph Chew of Connecticut.  
John Weatherhead, of New*

*York.*

*John Walker, of Virginia.  
E. Fitch, of Connecticut.*

*Thomas Walker, jun. of  
Virginia.*

*John Butler, interpreter for  
the crown.*

The mark of his nation.  
Abraham, or } chief of (L. S.) the Mo-  
Tyahaneeta, } hawks. The steel.

The mark of his nation.  
William, or } chief of (L. S.) the One-  
Sennghois, } das. The stone.

The mark of his nation.  
Hendrick, or } chief of (L. S.) the Tu-  
Saquarifera, } caroras. The cross.

The mark of his nation.  
Bunt, or Che- } chief of (L. S.) the O-  
naugheata, } nondagas. The mountain.

The mark of his nation.  
Tagaaia, { chief of (L. S.) the Cayugas.  
The pipe.

The mark of his nation.  
Gaustrarax, { chief of (L. S.) the Sen-  
cas. The high hill.

On the seventh day of January, in the year of our Lord one thousand seven hundred and sixty-nine, before me Isaac Jones, Esq; *mayor of the city of Philadelphia*, came the Rev. Richard Peters, Rector of the two united churches of Christ Church and St. Peters, in *Philadelphia*, one of the subscribing witnesses to the within-written deed, and made oath on the Holy Evangelists of Almighty God, that he was present, and did see the within-named Abraham, or Tyahanesera, *a chief of the Mohawks*; William, or Sennghois, *a chief of the Oneidas*; Hendrick, or Saqraser, *a chief of the Tuscaroras*; Bunt, or Chenaugheata, *a chief of the Onondagas*; Tagaaia, *a chief of the Gayugas*; and Gauftarax, *a chief of the Senecas*, make the several marks in the within-written deed, against their respective names, placed as the particular mark of each nation; and did also see the said Abraham, or Tyahanesera; William, or Sennghois; Hendrick, or Saqraser; Bunt, or Chenaugheata; Tagaaia, and Gauftarax, respectively seal, and, as their act and deed, deliver in behalf of themselves, and the several nations which they effectually represented, the within-written deed poll; and that the name Richard Peters, subscribed thereto as a witness of the same, is of his own handwriting: And also, that the said Richard Peters saw W. Franklin, governor of New Jersey; Fred. Smyth, chief justice of New Jersey; Thomas Walker, commissioner for Virginia; James Tilghman, of the council of Pennsylvania; John Skinner, capt. in the 70th regiment; Joseph Chew, of Connecticut; John Walker, of Virginia; E. Fitch, of Connecticut; Thomas Walker, jun. of Virginia; John Butler, interpreter for the crown; subscribe their names as witnesses likewise, to the signing, sealing, and delivery of the within-written deed poll. Witness my hand and seal, the day and year aforesaid.

I. JONES. (L. S.)

M

Grant

*Grant from the Six United Nations to the King of England.*

**T**O all to whom these presents shall come, or may concern: We the sachems and chiefs of the Six Confederate Nations, and of the Shawnees, Delawares, Mingoes of Ohio, and other dependant tribes, on behalf of ourselves and of the rest of our several nations, the chiefs and warriors of whom are now here convened by Sir William Johnson, baronet, his majesty's superintendent of our affairs, send greeting:

Whereas his majesty was graciously pleased to propose to us in the year one thousand seven hundred and sixty-five, that a boundary line should be fixed between the English and us, to ascertain and establish *our limits*, and prevent those intrusions and encroachments, of which we had so long and loudly complained; and to put a stop to the many *fraudulent advantages* which had been so often taken of us; *which boundary* appearing to us as a wise and good measure, we did then agree to a part of a line, and promised to settle the whole finally, whensoever Sir William Johnson should be fully impowered to treat with us for that purpose:

And whereas his said majesty has at length given Sir William Johnson orders to complete the said boundary line between the provinces and Indians; in conformity to which orders, Sir William Johnson has convened the chiefs and warriors of our respective nations, *who are the true and absolute proprietors of the lands in question*, and who are here now to a very considerable number:

And whereas many uneasinesses and doubts have arisen amongst us, which have given rise to an apprehension that *the line* may not be strictly observed on the part of the English, in which case matters may be worse than before; which apprehension, together with the dependant state of some of our tribes, and other circumstances,

circumstances, retarded the settlement, and became the subject of some debate; Sir William Johnson has at length so far satisfied us upon it, as to induce us to come to an agreement concerning the line, which is now brought to a conclusion, the whole being fully explained to us in a large assembly of our people, before Sir William Johnson, and in the presence of his Excellency the Governor of New Jersey, the commissioners from the provinces of Virginia and Pennsylvania, and sundry other gentlemen; by which line so agreed upon, a considerable tract of country along several provinces, is by us ceded to his said majesty, which we are induced to, and do hereby ratify and confirm to his said majesty, FROM THE EXPECTATION and CONFIDENCE we place in his royal goodness, that he will GRACIOUSLY COMPLY with our HUMBLE REQUESTS, AS THE SAME ARE EXPRESSED IN THE SPEECH OF THE SEVERAL NATIONS, ADDRESSED TO HIS MAJESTY, through SIR WILLIAM JOHNSON, ON TUESDAY THE FIRST DAY OF THE PRESENT MONTH OF NOVEMBER; wherein we have DECLARED OUR EXPECTATIONS of the continuance of his majesty's favor, and our desire that our ancient engagements be observed, and our affairs attended to by the officer who has the management thereof, enabling him to discharge all the matters properly for our interest: That the lands occupied by the Mohocks, around their villages, as well as by any other nation affected by this our cession, may effectually remain to them, and to their posterity; and that any engagements regarding property, which they may now be under, may be prosecuted, and our present grants\* deemed valid on our parts, with the several other humble requests contained in our said speech:

And

\* The grants which the Six Nations then made, and are here alluded to, were as follow: one to Mr. Trent;—one to George Croghan, Esq.;—and one to Messrs, Penn, proprietors of the province of Pennsylvania.

And whereas at the settling of the said line, it appeared that the line described by his majesty's order, was not extended to the northward of Owegy, or to the southward of Great Kanhwawa river; we have agreed to and continued the line to the northward, on a supposition that it was omitted, by reason of our not having come to any determination concerning its course, at the congress held in one thousand seven hundred and sixty-five:---And inasmuch as the line to the northward, became the most necessary of any, for preventing encroachments, on our very towns and residences; and we have given this line more favourably to Pennsylvania for the reasons and considerations mentioned in the treaty:---We have likewise continued it south to the Cherokee river, because the same is, and we do declare it to be our true bounds with the southern Indians, and that we have an undoubted right to the country as far south as that river, which makes our cession to his majesty much more advantageous than that proposed: Now, therefore, Know Ye, that we the sachems and chiefs aforesaid, native Indians and proprietors of the lands hereafter described, for and in behalf of ourselves and the whole of our confederacy, FOR THE CONSIDERATIONS HEREIN before mentioned, and also for and in consideration of a valuable present of the several articles in use amongst Indians, which, together with a large sum of money, amount, in the whole, to the sum of ten thousand four hundred and sixty pounds, seven shillings and three-pence sterling, to us now delivered, and paid by Sir William Johnson, baronet, his majesty's sole agent and superintendant of Indian affairs, for the northern department of America, in the name and behalf of our Sovereign Lord George the Third, by the grace of God, of Great Britain, France and Ireland, king, defender of the faith; the receipt whereof

whereof we do hereby acknowledge; *we, the said Indians, have for us, our heirs and successors, granted, bargained, sold, released and confirmed;* and by these presents, *do grant, bargain, sell, release and confirm,* unto our said sovereign lord king George the Third, all that tract of land situate in North America, *at the back of the British settlements, bounded by a line which we have now agreed upon,* and do hereby establish as the **BOUNDARY** between us and the British colonies in America; beginning at the mouth of the *Cherokee or Hogohege river,* where it empties into the river *Ohio,* and running from thence upwards along the south side of the said river to *Kittanning,* which is above *Fort Pitt;* from thence by a direct line to the nearest fork of the west branch of *Susquehanna,* thence through the *Alleghany mountains,* along the south side of the said west branch, till it comes opposite to the mouth of a creek called *Tiadaghton;* thence across the west branch, and along the south side of that creek, and along the north side of *Burnet's Hills,* to a creek called *Awandae;* thence down the same to the east branch of *Susquehanna,* and across the same, and up the east side of that river, to *Owego;* from thence east to *Delaware river,* and up that river to opposite where *Tianaderha* falls into *Susquehanna;* thence to *Tianaderha,* and up the west side thereof and the west side of its west branch, to the head thereof; and thence by a direct line to *Canada creek,* where it empties into *Wood creek,* at the west end of the carrying place beyond *Fort Stanwix* and extending eastward from every part of the said line, as far as the lands formerly purchased, so as to comprehend the whole of the lands between the said line, and the purchased lands or settlements, except what is within the province of *Pennsylvania;* together with all the hereditaments and appurtenances to the same belonging or

or appertaining, in the fullest and most ample manner; and all the estate, right, title, interest, property, possession, benefit, claim, and demand, either in law or equity, of each and every of us, of, in, or to the same, or any part thereof; *To have and to hold the whole lands and premises hereby granted, bargained, sold, released, and confirmed as aforesaid*, with the hereditaments and appurtenances thereunto belonging; **UNDER THE RESERVATIONS MADE IN THE TREATY**, unto our said sovereign lord King George the third, his heirs and successors, to and for his and their own proper use and behoof, for ever. In witness whereof, *we, the chiefs of the confederacy*, have hereunto set our marks and seals, at *Fort Stanwix*, the fifth day of November one thousand seven hundred and sixty-eight, in the ninth year of his Majesty's reign.

Signed, sealed, and delivered in the presence of }  
 Wm. Franklin, governor of New Jersey. }  
 Frederick Smyth, chief justice of New Jersey. }  
 Thomas Walker, commissi- }  
 oner for Virginia. }  
 Richard Peters, { of the council }  
 James Tilghman, { of Pennsylvania }

The mark of his nation.  
 Abraham, or } chief of (L. S.) the Mo-  
 Tyahanciera, } hocks. The steel.  
 Hendrick, or } chief (L. S.) of the Tu-  
 Saquarifera, } scaroras. The stone.  
 Conahquieso, } chief (L. S.) of the O-  
                 } ncidas. The cross.  
 Bunt, or Che- } chief (L. S.) of the On-  
                 } naugeata, nondagas. The mountain.  
 Tagaia, { chief (L. S.) of the Cayu-  
                 } gas. The pipe.  
 Gaustarax, { chief (L. S.) of the Seneca. The high hill.

At a *Congress held at Fort Stanwix with the several Nations of Indians, Saturday, November the 5th, 1768,*  
*Present, as at the last Meeting.*

The deed to his Majesty,---one to the Proprietors of Pennsylvania, and the one to the Traders, being then laid on the table, were executed in the presence of the Governor of New Jersey, The, Commissioners, of Virginia and

N. B. The grant to Mr. Croghan was subscribed by Mr. Walker commissioner for Virginia, and the same persons in authority, who were witnesses to the above deed to the King and the one to the proprietors of Indiana.

and Pennsylvania, and the rest of of the Gentlemen, present.\* After which, the Chiefs of each nation received the *caſh*, which was piled on a table for that purpose, and then proceeded to divide the goods amongst their people, which occupied the remainder of the day.

At a Congress held at the German Flats, in the province of New York, with the Six United Nations of Indians, in July 1770, by Sir William Johnson, Baronet, his Majesty's sole agent and superintendent of Indian affairs, &c. &c. Sir William Johnson spoke to them as follows:

“ Brothers,

“ The King my master having received all the papers and proceedings relative to the great treaty at Fort Stanwix, together with the deed of cession which you then executed to him, has laid them before his council of great men, and after considering the whole of them has signified to me. (which I hope will be deemed a farther instance of his paternal goodness,) that he did not require the land so far to the southward, as the Cherokee river, if it was of the least inconvenience to his children, whose interest he has so much at heart. He has, at length, in compliance with your own desires, as transmitted by me, and the public grant that you made, impowered me to ratify the same, by letters I have received from the lord (the Earl of Hillsborough) who is one of his Majesty's secretary's (holding his lordship's letter in his hand,) which I now propose to do. You all know the deed of cession, of which this (shewing a copy) is a true copy; you all know it

“ was

\* The deed to the traders had been executed two days before, but Sir William Johnson and the Commissioner's recommended, that the chiefs of the Six Nations, who had signed it, should carry it into Congress, and publicly acknowledge the execution of it, at the same time they executed the grant to the King of England, and the Proprietors of Pennsylvania; which was accordingly done.

" was executed in a public meeting of the greatest number of Indians, that has ever been assembled, within the time of our remembrance, and that all who had any pretensions were duly summoned to it."

To which the *Six Nations* answered;

" Brother Goragh Warraighiyagey,  
 " We are now met together in full council, to answer you concerning what you last spoke to us, about the King's having received our deed, and the proceedings at Fort Stanwix, with his ratification of the same, with which we are highly pleased. When we met you to so great a number, in so publick a manner at Fort Stanwix, we should hardly have acted as we did, unless we had been possessed of a FULL RIGHT SO TO DO. We now desire that you may assure the King, that it was our property we justly disposed of, and that we had full authority so to do."

COUNSELLOR DAGGE of LONDON, his *Opinion* on the Indian Grant of Lands to William Trent and others.

THE writers on jurisprudence agree in the proposition, " That the original right to all kinds of property arose from *preoccupancy*, and that in a state of nature every one might possess himself of, and retain any vacant subject." The first occupant had a right to grant, cede or transfer the subject, he had possessed himself of, to such persons, and upon such terms, as he thought proper; and if before such grant, cession or transfer, the occupant died, his property descended to his children. The right of transmitting property always resided in the owner, and civil institutions only prescribed the mode of carrying that right into effect. In that period of society, when countries were formed, and their boundaries fixed, we find that different

different districts were appropriated to the native owners, the first occupants, or in case of vacant, or derelict lands, to the first discoverers. From these original proprietors, each country was transmitted to other proprietors, by the consent, or by the conquest of the present owners.

In the case under consideration, I am of opinion, that the *Indians* of the *Six Nations* appear to have been entitled to the lands in question from preoccupancy, or from conquest; but however their right accrued, they are acknowledged, in express words by the deed of cession to the crown, made at Fort Stanwix, November 5th, 1768, to have been at that time "the true and absolute proprietors of the lands in question;" and so they were also acknowledged to be in the publick negotiations between *England* and *France*, in the year 1755, and so also, as is stated in the case, several treaties of peace, and commerce entered into with particular nations, or tribes of *Indians*, by the *English* nation, consider and treat the natives, or occupiers, as the lawful possessors, and owners of the countries they respectively occupy.

The deed of cession to the crown, on the 5th of November, 1768, was made in consideration of 10460*l.* 7*s.* 3*d.* sterl<sup>ing</sup>, then paid to the *Six United Nations*, and for other considerations mentioned and expressed in that deed, and the treaties previous and preparatory to it. This deed of cession, the conveyance to Mr. *Trent*, and the treaties in 1765 and 1768, must be considered together, as they all tend to illustrate the whole transaction, and explain the intention of the contracting parties: And taking the whole under consideration, it appears, that the *Six United Nations* were truly sensible of the great loss the traders had sustained by the treachery and depredations of some of their tri-

butary or dependant tribes; that a requisition was made to the *Six United Nations* in May, 1765, for a grant of land, by way of compensating in some measure for the damages the traders had sustained, by the depredations of their dependant or tributary *Indians*; that the *Six Nations*, after deliberating from the 2d of May, they when this requisition was made, to the 6th of May, they agreed that the request of the traders should be complied with, and they would grant them some lands near Fort Pitt; that at the Congress and Treaty in November, 1768, held at Fort Stanwix, the Chiefs and Sachems of the *Six United Nations* again took this matter under their consideration, and upon the first day of that month expressly declared, that "in order to shew that they love justice, they expected that the traders who suffered by some of their dependants in the war five years since, might have a grant for the lands they then gave them down *Ohio*, as a satisfaction for their losses."

On the 3d day of the same month of November, the *Six Nations*, by their Sachems and Chiefs, executed the conveyance to Mr. *Trent*, which proceeds upon a recital, that he had been impowered by several letters of attorney from the suffering traders named in the said deed, to ask, solicit, demand and receive from the *Six Nations* a grant of a tract of land, as a satisfaction, compensation and retribution for the goods, merchandise and effects of the said *William Trent*, and of the several traders, which the said *Shawnee*, *Delaware* and *Huron* tribes, tributaries of the said *Six Nations*, (contrary to all good faith, and in violation of their repeated promises of safety and protection to the traders, their servants and effects, while trading in their country) did violently seize upon, and unjustly appropriate to their own use.

The

The deed then declares, that in consideration of the sum of £ 85916: 1: 8, lawful money of the province of *New York*, the same being the amount of the goods and merchandize, which were unjustly seized and taken from the traders as aforesaid, whereof just and fair accounts, on oath and affirmation, had been produced, interpreted and explained to them, and which, at their desire, were then lodged and deposited with the said Sir *William Johnson*.

The Chiefs and Sachems of the said *Six United Nations*, for the said considerations, and in consideration of five shillings, did give, grant, bargain and sell unto *his Majesty*, his heirs and successors, to and for the *only use*, benefit and behoof of the said *William Trent*, in his own right, and as attorney aforesaid, all that tract of land described in the conveyance, to hold unto *his Majesty*, his heirs and successors, but to and for the *only use*, benefit and behoof of the said *William Trent*, in his own right, and as attorney aforesaid, his heirs and assigns for ever. This deed of conveyance seems to have been executed in the most publick manner, in the presence of the King's Governor of *New Jersey*, and the Commissioners from *Virginia* and *Pennsylvania*, and several other persons who attended the Congress, and attested the execution of this conveyance, which, by that means, received every degree of solemnity and sanction.

On the 5th day of the same month of November, 1768, the said Chiefs and Sachems executed their deed of cession to *his Majesty*, of a large tract of country upon the river *Ohio*. In this deed of cession the *Indians* expressly stipulated, that their *present grants*, (which words are explained in the minutes of Congress of November 5th, where the traders deed is mentioned with the other grants then made) "should be deemed valid

*valid on their parts,*" and they convey to the King, not only in consideration of the present then made, and the money then paid by the King, amounting to £ 10460: 7: 3, but also for the other considerations in the deed before mentioned, and *the Habendum* is to the King, his heirs and successors, *under the RESERVATION MADE IN THE TREATY*, so that the deed of cession to the King virtually confirms the conveyance to Mr. *Trent*.

Upon the whole I am of opinion, that Mr. *Trent*, in his own right, and as attorney for the traders, *hath a good, lawful and sufficient title* to the land granted by the said deed and conveyance, subject only to the King's sovereignty over the settlements to be established thereon, and over the inhabitants, as *English subjects*.

Henry Dagge.

*Lincoln's Inn, March 20, 1775.*

*Serjeant Glyn, the late RECORDER of the city of London's Opinion.*

I Entirely concur with Mr. *Dagge* in his opinion, on this case. The property of the soil conveyed to Mr. *Trent*, for himself and as attorney, was certainly in the *Six Nations*, and as incident to that property, they had a power of alienating and transferring, in any manner, or to any persons, *unless they had been restrained by their own laws*. In this case, the supreme power of the country resided in the sellers, who had therefore an *absolute power* of alienating; and the transaction being fair and open, and for the express purpose of doing an act of public justice, must bind the *Six Nations* in good faith. If we suppose, that the *sovereignty* of the land still remains in the *Six Nations*, the property of the soil *must* be in the grantee, Mr. *Trent*, and cannot, without violence and injustice, be taken

taken from him. The very act, however, of the sovereign power of the *Six Nations* admits a capacity in the grantee, to take under the deed according to their laws or usage; and there is no law, that I ever heard of, that restrains the subjects of the crown of England from purchasing in foreign dominions. The intention of the parties here appears to have been to transfer the sovereignty to the crown of England, by the same instrument whereby the land was conveyed. This transfer of the sovereignty is effectual; it passed, and is confirmed by the deed of cession to the crown, dated two days after; but subject however to all the antecedent rights of property; the crown being entitled only to the immediate property of vacant and unappropriated lands; but in this case, the lands are abandoned by the proprietors, and conveyed to the grantee. If the crown had an original sovereignty, still the soil being the property of the *Six Nations*, they, and their alienee, should be protected by that sovereignty in their property. If the crown acquired the sovereignty by the grant to Mr. *Trent*, or by the deed of cession, the title of the grantee is then under the protection of the laws of England.

Upon the whole I am of opinion, that in every way of considering this case, the grant to Mr. *Trent* is good, sufficient and lawful; and is under the protection of the laws of England. *John Glynn.*

SERJEANT'S INN, April 13, 1775.

*The ingenious Dr. Benjamin Franklin's Opinion.*

HAVING long since carefully studied these points, I concur fully with Counsellor *Dagge* and Serjeant *Glyn*, in their opinions as above delivered.

*B. Franklin.*

Philadelphia, July 12th, 1775.

*His*

*His Excellency Patrick Henry, late Governor of Virginia's Opinion.*

**F**ROM principles, which appear to me very clear, I concur in the above opinions. P. Henry, jun.  
Philadelphia, July 29th, 1775.

*The opinion of Edmund Pendleton Esquire formerly speaker of the house of delegates of Virginia and one of its representatives in the Congress of the United States, and at present, one of the judges of the high court of appeal for that State.*

**I** Was always of opinion, that a purchase of lands made by a British subject of the Indians without the sanction of government, was wholly ineffectual to pass a title; and had Colonel Croghan's purchase from the Six Nations of lands on the Ohio and its branches, stood upon that ground only, I should have thought, he acquired no title thereby; but when in the treaty at Fort Stanwix, for a cession of some Indian lands to the crown, including those they had contracted to sell to Colonel Croghan, the Indians disclosed that contract, and insisted on a reservation of that land, to which the commissioners for the crown consented, and were witnesses to a deed which the Chiefs then executed for conveying the title to the King for his use, this made it a government transaction, and gave Mr. Croghan a good title to the land against the crown, in whom the title of vacant lands was then supposed to be, and from whom all land titles were to be derived to the members of the community, and of course against the community themselves.

I am therefore of opinion, that the title of Colonel Croghan, or those claiming under him, cannot be impeached, without establishing principles, which must destroy every other grant from the crown, under the former constitution.

Edmund Pendleton.

Virginia, July 19, 1777.

The

*The Opinion of James Mercer, Esq; a Counsellor at Law in Virginia, and one of the late Delegates in Congress, for that State.*

UPON consideration of the deed of confirmation of the 4th of November, 1768, from *Abraham, Tyahanarefera* and others, six Chiefs of the *Six Nations*, to Colonel *George Croghan*, for three tracts of land on *Monongehela* and *Ohio*, and considering the circumstances attending of making such a deed, to wit, that it was made at a public treaty at *Fort Stanwix*, in presence of the *Commissioners of the Crown*, who attended the execution of the deed, and approved the same, that the Chiefs did, by a talk publicly delivered to the said Commissioners, declare, that the whole of that treaty should be considered as void, unless his Majesty did confirm their deed to Colonel *Croghan*,---I am clearly of opinion, that Colonel *Croghan* has an undoubted title to the lands contained in the deed aforesaid, provided they lie in *Virginia*;---and my opinion is founded on principles, which differ this case from the case of Mr. *Henderson* and others, which are now combated by this State.

It is acknowledged on all hands, that *Indians* by their Chiefs have a power to sell, and convey their lands, accordingly government has heretofore uniformly treated with *Indian Chiefs* for the purchase of the lands of their nation, and have purchased and accepted deeds for the same. The policy of government has however disputed the right of individuals accepting grants from *Indians*, the legality of this principle, or its policy need not however be now considered, as I consider Colonel *Croghan's* deed from the facts above stated, free of any objection that can arise from either; for this deed being made to his Majesty his heirs and successors, there is no doubt, but there is a grantee capable of accepting,

and

and its being made at a public treaty with the knowledge, and approbation of the commissioners in whom the crown was represented, any objection from policy must fail, however this deed has still further support from the act of his Majesty. Its contents were reported among the other proceedings of the treaty, and the talk aforementioned also, by which the whole treaty was to be deemed *void*, unless his Majesty did confirm this deed; his Majesty approved the treaty, and promised to comply with it; surely then this deed, as part was confirmed, however I do' not consider an express engagement of his Majesty to fulfil this deed, as necessary to be proved---for as he knew of the deed, and the conditions annexed, unless his Majesty from some public act of notoriety, disapproved the treaty, and deed, I am of opinion he thereby consented to confirm the deed, and hold the lands therein described, in trust for Colonel Croghan according to the terms of the deed.

James Mercer.

July 22d, 1779.

On the 25th of July, 1776, Colonel George Morgan received a summons to attend John Harvey, Charles Simms, James Wood and Abraham Hite, Esqrs. Commissioners appointed by the Convention of Virginia, to attend them at Pittsburgh, the 2d of September following. These Commissioners were authorized to collect, and commit to writing, evidence in behalf of the state of Virginia, against the several persons claiming lands within its supposed territory and limits, under deeds and purchases from the Indians.

On the 1st of October, 1776, the Proprietors of Indiana (or the traders grant) transmitted the following memorial to the House of Delegates of Virginia.

To

*To the Representatives of the Freemen of the State of  
Virginia, in General Assembly met.*

*The Memorial of the Proprietors of a tract of land on  
the Ohio, called Indiana,*

Respectfully sheweth,

THAT in the year 1763, the *Shawneffe, Delaware* and *Huron* tribes of *Indians*, dependants and tributaries of the *Six United Nations*, contrary to the faith of treaties, and in violation of their repeated promises of protection to the persons, servants and effects of such traders, as should supply them, in their own country, with merchandize, did, without the least cause, most unjustly and violently seize upon, and appropriate to their own use, the merchandize and effects of several of your memorialists and others, under whom the rest of your memorialists legally claim.

That upon application made to the *Six United Nations*, by Sir *William Johnson*, baronet, at the request of the said traders, for a reparation of the damages sustained by the depredations and violence so committed, they did agree to make a compensation to the said traders; and in ratification of the said agreement, at a treaty held at *Fort Stanwix*, in the year 1768, in consideration of the sum of £ 85916: 10: 8, the amount of the value of the damages so sustained, for which the most authentic documents were produced, and the justice of them allowed, and were deposited in the hands of Sir *William Johnson*, at the request of the grantors, they the said *Six United Nations*, the true and absolute owners and proprietors of the lands hereafter mentioned, did grant to the said traders, as a retribution for the damages aforesaid, all that tract of land, beginning at the southerly side of the mouth of *Little Kenhawa Creek*; where it empties itself into the river *Ohio*, and running from thence south east to the *Laurel Hill*; thence

thence along the *Laurel Hill*, until it strikes the river *Monongehela*; thence down the stream of the said river *Monongehela*, according to the several courses thereof, to the southern boundary line of the province of *Pennsylvania*; thence westerly along the course of the said province boundary line, as far as the same shall extend, and from thence by the same course to the river *Ohio*; thence down the said river *Ohio*, according to the several courses thereof, to the place of beginning.

That the said grant was obtained, after mature consideration of the grantors, under the immediate superintendance of Sir *William Johnson*, and executed in the presence of the Governor of *New Jersey*, and others, among whom was the *Commissioner* then attending the general treaty, in behalf of the colony of *Virginia*. All which will appear manifest by a reference to a copy of the deed annexed to this memorial.

That your Memorialists having these facts before them, could not observe but with concern, that the *convention of Virginia* had, by their resolve of the 24th of June last, laid a foundation for calling in question, among others, the validity of the title of your memorialists to the lands so fairly, and with so much justice, granted to them, and for obstructing them in the sale and disposition of their own property.

First. Because the retribution made to your memorialists was made in the most public and solemn manner, and could or ought not to have been a matter unknown to the convention.

Secondly. Because it originated not only in the firmest principles of justice, established by the laws of nature and nations, but in the soundest policy.

Thirdly. Because it had been made by the persons, who have been acknowledged in all public and general treaties, and truly were, at the time of the grant, the sole

sole owners and proprietors of the lands granted, and of consequence having full right to grant the same.---

And---

Fourthly. Because at the time of the grant, there was no subsisting statute, law or ordinance whatsoever, prohibiting persons from accepting a grant of land from the natives.

And yet, if after what has been offered, the title of your memorialists should notwithstanding, at any future time, be called into discussion, conscious of the equity and validity of their right, they shall never hesitate to submit it to a proper judicatory, nor to defend it in the ordinary course of justice.

Under these circumstances your memorialists confide, that the legislature of the colony of *Virginia* will not, by any act or proceeding whatever, impeach, or in any respect prejudice the title of your memorialists, so well established on the principles of reason, equity and policy.

Our readers will now have seen the title of the proprietors of the tract of land, called *Indiana*, deduced from a treaty, on the part of the King of Great Britain with, and grants from the *Six United Nations of Indians*, as well to the King, as to these Proprietors, and all circumstances attending the same. They will also have collected from the foregoing pages, that the state of *Virginia* sets up pretensions to *all* the lands comprehended within the boundaries of the country purchased from the *Six nations* by the same King at *Fort Stanwix*; and also to all the territory extending from thence to the *south sea*. The legislature of *Virginia*, after council had been heard in the *house of delegates*, on behalf of the proprietors of *Indiana*, (the *senate house* refusing to permit council to speak) passed an *ex post facto law*, and declared their title to be *void*, and of

no effect.----Colonel *George Mason*, a member of the house of delegates, (with another gentleman who did not act) were appointed "to manage the interests of the " commonwealth of *Virginia*," upon this occasion; and the substantial parts of his chief arguments (as taken in writing by a gentleman\* who attended the house) were as follow: But before we enter into the examination of them, we earnestly desire, that it may be understood by the good people of that state, we do not mean, by any observations we shall make, to cast the slightest imputation upon them, or upon the gentlemen who so honorably distinguished themselves in the house of delegates, by proposing measures for doing justice to the proprietors of *Indiana*. This, we declare, is the farthest from our thoughts, as we entertain the highest respect for the rectitude, wisdom and virtue of the good people of *Virginia* at large;----our strictures are intended and shall *only* be pointed against the arguments of a very few artful, self-interested and designing men.

Colonel *Mason* insisted greatly upon *political expediency* and the *salus populi*.----These are very dangerous positions, and were most arbitrarily supported against every principle of reason, justice and law, by the house of delegates of *Virginia*, instituting itself into a court, for the determination of *private property*, (refusing at the same time to let the ordinary courts of justice hear and decide it) and sitting as *judges* in a case, where they were plaintiffs, giving judgment against the defendants, and causing an *ex post facto* law to be made, vacating the title of the proprietors of *Indiana*.† This was despotism in the highest degree, and especially, as that house

in

\* *William Trent*, Esq; one of the Members of the Honorable House of Assembly of the State of *New Jersey*.

† Whoever violates *private property*, or lessens or endangers it, Common Sense says, that he is an enemy to his country; and Publick Spirit says, that he should *feel its vengeance*. *Gordon*, vol. 2.

in behalf of *Virginia*, set up a claim to the lands in question and were of course parties themselves to the cause, which they thus passed judgment upon, and thereby destroyed private right, as far as their power extended.

From the baneful doctrine of *political expediency* have arisen evils of the greatest magnitude, in every age and country. The motives for the *stamp act* and the *present war* can be accounted for upon the same principle.--It is a doctrine, which harassed and grievously oppressed the subjects of *England*, in the reigns of *Elizabeth*, *James the First*, and *Charles the First*;----it gave birth to *ship money* and *star chamber* imprisonments and numerous other cruel acts of tyranny and imposition;----it generated *Sylla's proscriptions*, made *Caesar* perpetual dictator, and produced the present *ex post facto* law.

Mr. *Hume*, when treating of subjects exactly similar to this, justly remarks, that “ though *some* inconveniences may arise from the maxim OF ADHERING STRICTLY TO LAW, yet the advantages so much overbalance them, as should render the English for ever grateful to the memory of their ancestors, who after repeated contests, at last established that noble principle;”---of this opinion too were the freemen of *Virginia*, in 1776; for it is expressly provided in the Declaration of RIGHTS, “ which ought to belong to them and their posterity, and ought to be regarded as the foundation and basis of their government;” (*Rights* which the citizens of the several states, though ignominiously called and treated as *foreigners*, are entitled to by the articles of confederation) that “ in controversies respecting property, and in suits between man and man,-- the antient trial by jury is preferable to any other, AND OUGHT TO BE HELD SACRED;”---and in the constitution, or form of government of *Virginia*, made the

the 6th of May, 1776, it is declared, as one of the reasons, which induced the people of that state to separate from *Great Britain*, because, they were deprived “of the benefit of proceeding **BY JURY.**”---And Mr. Hume further remarks,---among all CIVILIZED nations, it has been the constant endeavour to remove every thing arbitrary and partial, from the decision of property; and the celebrated Mr. Locke says, that it is a mistake to think, the supreme or legislative power of any commonwealth can do what it will, and dispose of the subjects property arbitrarily, or take away part of them at pleasure. The legislative power, he says, is to govern by promulgated, established laws, NOT TO BE VARIED in particular cases, but to have one rule for rich and poor, for the favorite at court, and the countryman at plough.

The reason, he subjoins, why men enter into society, is the preservation of their property; and the end, why they choose and authorize a legislative, is that there may BE LAWS made, and rules set, as guards and fences to the properties of the members of the society; and it is also very aptly observed by a learned author,\* that the most cautious man in the world cannot, with all his circumspection, provide against a law, that may be made afterwards. If it be once drawn into practice, to deprive men of their properties by laws, *ex post facto*, there is an end of justice. When *Magna Charta* says, Nemo amittat feudum suum, nisi per judicium parium, aut leges terræ;---Let no man lose his freehold, but by the judgment of his peers, or the laws of the land; it means the settled common law of England, not statutes made, to take away private property, or to punish after crimes. These are the laws, our author asserts, that we are to have a regard to, and no one need, in a well ordered government (and indeed cannot) extend his

\* Vindication of the subjects right. London printed in 1706.

his caution beyond them. The law, says my Lord Coke, is the surest sanctuary that a man can take, and the strongest fortress to protect the weakest of all.----  
*Lex est tutissima cassis, et sub clypeo legis nemo decipitur.*\* In the laws abroad,\* it is a settled maxim, that we use no caution, but what the promulgated laws prescribe.--- In short, adds our author, he is a wise and cautious man, who is as wise and cautious as the law requires him to be; for he that is not sure of *the inheritance*, which he has in the law, *cannot be said to live in a settled and free state*, or under the government of law, *existing at the time he acquired his right* ---- And it was declared unanimously by the *Congress* of the united colonies of *North America*, in 1774, that the inhabitants of them are entitled to *life, liberty and property*, and that the respective colonies are also entitled to the *common law of England*, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law;----and in the address of *Congress* to the inhabitants of the province of *Quebec*, it is observed, that the next great right is that of *trial by jury*. This provides, that neither *life, liberty, nor property* can be taken from the *possessor*, until twelve of his unexceptionable countrymen, and peers of his vicinage, upon a full trial had, shall give in their verdict.---Was the happy *revolution* made to diminish “ *this great and inestimable privilege?*” God forbid.---It was made, among other things, to give the greatest security to the people, in the enjoyment of it. Learned and upright judges, with a jury of twelve men, are the surest defence, and protection, against all encroachment upon, and invasion of private property.-----The excellency of this

\* Coke, 2d part, folio 56.

† Majorus de *Avocatia*.

this part of the constitution shines with the brightest lustre, when it is considered, that the people are thereby delivered from the miserable situation of those, whose right has been scandalously invaded and adjudged by men, acting from fluctuating and local politicks, discretion, or expediency. My Lord Coke pathetically

“ ADMONISHED Parliaments, that instead of this  
 “ ORDINARY and PRECIOUS Trial, PAR LEGEM  
 “ TERRÆ, they bring not in absolute and partial  
 “ Trials, BY DISCRETION.”

But we forbear to cite further authorities,---enough have been produced to shew the total insecurity to all property, wherever the pernicious and ruinous doctrine of expediency, and *ex post facto laws* prevail.---- And we trust our impartial readers will agree with us in saying, that the validity of the title of the proprietors of *Indiana*, ought not to have been decided by modern ideas, but such as prevailed at the time of its creation; and as it was *good* under the crown of *England*, it ought certainly to have had the same effect under the republic of *Virginia*. A contract made in *China*, or any other foreign country, would be determined in a court of justice, by the laws of the country, where the contract took its rise. In like manner, the grant in question ought to have been settled by the laws in being at the time of its being made, and not by an *ex post facto law*.

Colonel *Mason* also insisted, that the commonwealth of *Virginia* had the right of *pre-emption* of all lands within its chartered boundaries.---We answer, there is no act of the legislature, that gives that state such a right.--- There is indeed a law, that says, purchases shall not be made of tributary *Indians*, but the *Six United Nations* having never been tributary either to the colony, or state of *Virginia*, this act of course cannot destroy any

any cessions made by them<sup>s</sup>. On the contrary, it most strongly operates to the acknowledgment of the validity of their grants; and as to boundaries derived from a charter made one hundred and sixty-nine years ago to the London Company, "to the dissolution of which, "they silently acquiesced and submitted,"\* it is too ridiculous to deserve serious notice. Where, however, is the original charter? Can Virginia produce it to found her claim upon?---No. It remained in England, and "was, with the original court books, taken from the company by the King and Privy Council of that kingdom, and never again returned to them."†

Mr. Stith, a native of Virginia, also says in his history of that colony, printed at Williamsburgh, in 1737, "that of the two first of the following charters, (viz: the charter of 1606 and the one of 1609) I have seen FOUR copies; one among the oldest records in the Secretary's office, much mangled and defaced; another in the council office, tolerably legible; a third in a very fair book of records, which belongs, as I take it, to the house of burgesses; and the fourth, most correct, I found among Sir John Randolph's papers, transcribed by his clerk, and collated, as I suppose, from different copies. However, I can venture to assure the reader, that the edition, which I have given by the help of the two last mentioned copies, is still fuller and more correct, than any of them. Of the third charter, I have never met with but one copy, likewise in Sir John Randolph's collection of state papers. It is pretty correctly transcribed, and I hope it will be found, WITH THE NECESSARY EMENDATIONS I have made in it, very compleat and exact. These are all the King's charters to the COMPANY, that I have been able to find,

P    " although

\* Stith's History of Virginia.

† Idem.

" although they are certainly not all he granted; for  
 " many things are mentioned in the company's records,  
 " as drawn from their charters, which are nevertheless  
 " not to be found in them."---Which of these copies of  
 charters does Virginia rely upon? Is it the one described  
 by our author, as much mangled and defaced? or  
 on the one tolerably legible? or the one said to be found  
 in a fair copy of records? or the one transcribed and  
 collated by Sir John Randolph's clerk, (as Mr. Stith  
 supposed) from different copies, and which he affirms  
 was most correct? or the one, that this gentleman re-  
 marks, with the necessary emendations he has made, very  
 compleat and exact.--Here then is a choice of difficulties!  
 We submit the decision of that choice to those whom it  
 may concern; it being of little importance to the candid,  
 honest or judicious citizens of Virginia, or of any of the  
 other states in union,---for " either Virginia stands in  
 " succession to the London company, to whom the  
 " charter was granted,\* or to the crown of England.  
 " If to the London company, then it becomes her, as  
 " an outset in the matter, to shew who they were, and  
 " likewise, that they were in possession, at the com-  
 " mencement of the revolution. If to the crown,  
 " then the charter is of consequence superceded; be-  
 " cause the crown did not possess territories by char-  
 " ter, but by prerogative without charter. The no-  
 " tion of the crown chartering to itself, is a nullity;  
 " and in this case, the unpossessed lands, be they little  
 " or much, are in the same condition as if they never  
 " had been chartered at all; and the sovereignty of  
 " them devolves to the sovereignty of the United  
 States."†

Colonel

\* Mr. Stith observes, that the dissolution of the company " was an event  
 certainly of benefit and advantage to the country, (Virginia) as we, in A-  
 merica, find by experience, that it is better to be under a royal govern-  
 ment, than in the hands of proprietors in what shape or manner soever."

† Public Good, printed in 1781.

Colonel Mason next insisted, that the King had a right only to purchase as a trustee for the use of the state of Virginia, and the sale to the proprietors of Indiana was bad, as it was made to FOREIGNERS. Our indignation is provoked at such an invidious expression. It was very early indeed in the revolution, to find such injurious distinctions made between the citizens of Virginia and those of the other states;---and especially in a trial of landed property, in which freemen of the several governments of Rhode Island, New York, Pennsylvania and Maryland, were concerned. Did not the gentleman know, that by the articles of the confederation and perpetual union, it is expressly provided, " That the better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of all the states shall be entitled to all privileges and immunities of free citizens in the several states ?" Will he venture to say, that at that time these articles were not compleated, on account of Maryland resisting the unwarrantable claim of Virginia to all the back lands? Had not the latter state then signed the articles, and did it not assent, by it's delegates in Congress, to a vast variety of acts done by that honorable body, in pursuance of them.

The following facts will, however, shew the appellation of foreigners was not a casual expression, but that the state of Virginia considered the citizens of the other states in confederation, as much foreigners as the subjects of Great Britain, or those of the Great Mogul are.----On the 16th of October, 1779, Lieutenant Colonel Charles Simms, a Virginian, presented a petition to the house of delegates of Virginia, setting forth, That he had a claim for 2961 acres of land, on the river Ohio and Raccoon creek, which proceeded from a purchase

purchase from *George Croghan*; and his (the latter's) title was founded upon a grant from the *Six Nations of Indians*. (It is exactly similar to that of the proprietors of *Indiana*, and secured by the treaty of Fort *Stanwix*.) Mr. *Croghan* conveyed these lands to *Alexander Ross* and *William Dunbar*, and they sold them to Colonel *Simms*.

On the 19th of October, the Committee of *Propositions and Grievances of Virginia*, RESOLVED, and the House of Delegates of that state agreed to the same, " That it is the opinion of this Committee, that the memorial of Lieutenant Colonel *Simms*, praying, " that his title to 2961 acres of land, lying on the " *Ohio river*, (which he purchased of *Alexander Ross* " and *William Dunbar*) may be confirmed, having been " prevented from improving the said lands, as by law " is required, by being in the continental army ever " since the year 1776; and that he might obtain " grants for the said lands, upon paying the usual " composition money, under the former government, " is reasonable."\*---And accordingly, an act of assembly passed under the title of an " *Act for granting warrants to Charles Simms, Gentleman, to survey certain lands.*"†--Here we see, that Colonel *Simms*'s purchase of 2961 acres of land, derived from Mr. *Croghan*'s title from the *Six Nations*, was confirmed to him;---and encouraged from hence to believe, that the same justice would be rendered to others, holding under the same right, Messrs. *Bernard Gratz*, *Joseph Simons*, *Edmund Milne* and *Michael Gratz*, citizens of the state of *Pennsylvania*, on the 10th of November, 1779, presented a memorial to the house of delegates of *Virginia*, setting forth, that " they have claims in " certain unappropriated back lands, by purchase from " George

\* Journals of the House of Delegates of *Virginia*.

† Idem.

" George Croghan, whose purchase is founded in a  
 " purchase from the Chiefs of the *Six Nations*, and  
 " praying, that the said claims may be confirmed."\*  
 On the 25th of November, it was *resolved* by the house  
 of delegates, " that the *memorial* of *Bernard Gratz*,  
 " in behalf of himself and others, be **REJECTED**, for  
 " that, if they have any legal or equitable claim to the  
 " lands conveyed by *George Croghan*, such claim should  
 " be investigated, and determined in a court of law or  
 " equity."†---

The house of delegates *first* form a bill, and that is  
 enacted into a law, (Appendix, No. 2) declaring,---  
 " That all sales and deeds, which HAVE BEEN, or  
 " shall be made by any *Indian* or *Indians*, or by any  
 " *Indian nation* or *nations* of *Indians*, for lands within  
 " the said limits, (to wit, of the chartered territory)  
 " to or for the separate use of any person or persons  
 " whatsoever, shall be, and the same are hereby declared  
 " utterly void and of no effect."----And then the house  
 of delegates *resolve*, that Mr. *Gratz*, &c. should have  
 their claim investigated and determined in a court of  
 law or equity.----What a mockery of justice was this?  
 What a shameful distinction was here made between  
 Mr. *Simms*, a *Virginian*, and Mr. *Gratz*, a *Pennsylvanian*? and both holding under precisely the same right,  
 deduced from Mr. *Croghan*. Why had Mr. *Simms* a  
 special *act* passed in his favor?-----and why was Mr.  
*Gratz* referred to the ordinary courts?----Because you  
 perfectly knew, Gentlemen, the mouths of the judges  
 of the courts of law or equity were *closed* by your ever  
 memorable *ex post facto* law, of June, 1769. (Ap-  
 pendix, No. 2.) It was cruel, Sirs, thus to sport with  
*foreigners*;----you ought, at least for your own sakes,  
 to have preserved a little more ostensible shew of mode-  
 ration

\* Journals of the House of Delegates of Virginia.      † Idem.

ration and equity, than you dispensed to Mr. Gratz, upon this occasion:----But it seems it was *political justice* to protect the title of Colonel Simms, and *political expediency* to reject the memorial of Mr. Gratz, and refer him to a *court*, which you had *previouly disqualified* from doing him justice.\*

We proceed farther to examine the position, that the *King* had a *right only to purchase*, as a *trustee* for the *use* of the state of *Virginia*. In what record, or law book did Colonel *Mason* find that the *King* was thus limited? It is not to be found in any of the *charters*, so much depended upon; and it is certain, that the *colony* of *Virginia* never presumed to hold that language, or set up this extravagant pretension;----But patiently submitted to every distribution of lands, the *Kings* or *Queens* of *England* thought proper to make. And private subjects of *Virginia*, frequently applied immediately to the crown for grants of land;----And the legislature, and people of that colony, always obeyed royal proclamations and instructions, as we have abundantly shewn and shall shew in the preceding and following pages, particularly respecting the acquiring and seating lands, and the payment of *quit rents* for them, to the crown of *England*. Were not *Maryland*, part of *Pennsylvania*, and lord *Fairfax*'s grant of the northern neck taken out of the alledged, chartered boundaries of *Virginia*, and were not lord *Baltimore*; and lord *Culpepper* (whose daughter married Thomas lord *Fairfax*) at the time of their obtaining their respective grants, as much *Foreigners*, as the proprietors of *Indiana* are? Did not the *Ohio company* in the year 1748, after the *Lancaster* and *Logg's Town* treaties were had, present

\* "The national judges are no more than the mouth that pronounces the words of the law; mere passive beings, incapable of moderating either its force or rigor." *Montesquieu*, vol. I.

present a petition to King George the Second, in these words---“ John Hanbury of London, in behalf of himself and Thomas Lee, Esq; a member of his Majesty’s council, and one of the judges of the supreme court of judicature of his Majesty’s colony of Virginia, Thomas Nelson, Esq; of his Majesty’s council of Virginia, Colonel Cressop, Colonel William Thornton, William Nimo, Daniel Cressop John Carlisle, Lawrence Washington, Augustine Washington, George Fairfax, Jacob Giles, Nathaniel Chapman and James Woodroop, Esqrs. all of your Majesty’s colony of Virginia, and others, their associates, for settling the countries on the Ohio, and extending the British trade beyond the mountains, ON THE WESTERN CONFINES OF VIRGINIA.”\*--And in consequence of this petition, did they not obtain a royal instruction directed to the governor of Virginia, for granting them five hundred thousand acres of land? Did not a committee of that company in the year 1761 by petition, renew their application to the King for a grant of the said lands,--and if it should be asked, who signed this petition, We answer, the same Colonel George Mason, who was appointed to manage the interests of the Commonwealth of Virginia, and who said, the King had a right only to purchase, as a trustee for the

\* Here we see, that one of the judges of the supreme court of judicature, &c. and another member of the council, with a number of considerable persons in the colony of Virginia, concurred in acknowledging,—that the Allegany Mountains were the western confines of Virginia, and in conformity to this idea, the preamble of the above petition to King George the second, was in these words: “ That by the treaty of Lancaster, and also by deed bearing date the 2d of July, 1744, the northern Indians, by the name of the Six Nations, (who claimed all the lands WEST OF VIRGINIA, and also to and on the waters of the Mississippi and the Lakes, by right of conquest from several nations of Indians, who formerly inhabited that country, and have been extirpated by the Six Nations) did yield up and make over, and for ever quit claim to your Majesty and your successors, ALL THE SAID LANDS WEST OF VIRGINIA, with all their right thereto, as far as your Majesty should at any time thereafter be pleased to EXTEND THE SAID COLONY.”—A plain proof that Judge Lee and his associates were of opinion, that the Allegany Mountains were the western boundaries of Virginia.

the use of the state of Virginia, and Phil. Lud. Lee, James Scott, J. Mercer and Thomas Ludd. Lee of the same state;---and did not also Colonel Mason, subscribe a letter, dated the 9th of September 1761, addressed to governor Dunwiddie in London, for the purpose of purchasing lands upon the Ohio, from the King of England?---Let the following fact decide.

Sir,

AS we may expect a peace next winter, and have no doubt north America will be secured to the British government, and LIBERTY will be then granted to his Majesty's subjects IN THESE COLONIES, to settle on the lands on the Ohio;----We, the committee of the Ohio company, think it a proper time, as soon as peace is concluded, to apply for a grant of the lands intended us, by his Majesty's instructions to Sir William Gooch, and have for that purpose sent over a petition to his Majesty, and a large and full state of our case; and have employed Mr. Charlton Palmer, a man, we are informed, of great capacity and diligence, to solicit our cause, and endeavour by all means TO GET US A PATENT IN ENGLAND. He will be directed to apply to our members in London, for their advice and assistance; and as no person knows the affair better than Mr. Dunwiddie, nor can it be imagined any of the company have such an acquaintance or interest with persons in power;---let us beg you will please to exert yourself in getting us a patent by natural bounds, on the best terms possible;---for rather than be remitted to the government here, who from jealousy, or some other cause, have ever endeavoured to disappoint us in every design we could form to settle and improve the lands;--WE WILL AGREE TO ANY REASONABLE CONSIDERATION FOR SUCH A DEED FROM ENGLAND. But if this cannot be obtained, that the most plain and positive

instructions

*instructions to the Governor of Virginia be procured on terms the most advantageous to the company.*

We are Sir, &c. Signed,

*James Scott.*

*J. Mercer.*

*G. Mason.*

*Thomas Lud. Lee.*

*Philip Lud. Lee.*

Here we find Colonel *Mason* and his associates expressing their expectation, “that liberty will be granted “to his Majesty’s subjects IN THESE COLONIES, to “settle on the LANDS on the Ohio.” Colonel *Mason* did not then, as he does now, imagine, that they were the exclusive property of *Virginia*, or that the citizens of that state were *only* to possess them. The foregoing letter affords the strongest proof to the contrary, of the latter opinion by his, and his associates “endeavouring by all means to get a patent in England;—“for, they said, rather than be remitted to the government here, (*Virginia*) &c. we will agree to any reasonable consideration for such a deed from England.”

If the King had only a right to purchase lands, as a trustee for the use of *Virginia*, as is pretended,---why were Colonel *Mason*, &c. so solicitous to pay their money to this King for his patent?---and why did he and his associates admit into their company those *foreigners* *John Hanbury* and *Samuel Smith* of *London*, *Arthur Dobbs*, Esq; of *Ireland*, and afterwards of *North Carolina*, &c. since sales were “bad,” which were made to “*foreigners*.” The truth is,---Colonel *Mason* well knew, that the Governor and Council of *Virginia* could not authorise the Secretary to pass warrants, nor could the Governor grant patents for any lands, but where previous liberty had been generally or specially given by the crown for that purpose; otherwise Colonel *Mason*,

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as

as a lawyer of eminence, would not have endeavoured to purchase half a million of acres of land for himself and associates, from the *King*, or desire their agent, in failure of getting a patent in *England*,---to procure "the most plain and positive instructions to the Governor of *Virginia*, on terms the most advantageous to the company."---If the King was *only as a trustee* for the use of *Virginia*,---why apply to him for a patent, or in failure of getting one,---to procure *instructions* to his Governor? Was this conduct decent or dutiful to the government of *Virginia*, supposing it to possess the right, of enjoying all lands purchased by the *King* wholly for its use?---But Celonel *Mason* knew the fact was not so, and that the *King* had the sole power of granting lands as well in *Virginia*, as westward of the *Alleghany* Mountain, (after they were ceded by or conquered from the natives,) either immediately by patents signed by his proper officers in the kingdom of *England*, or by his Governor in *Virginia*, in virtue of general or particular orders for that end;---and let the forty-fifth instruction to the Earl of *Dunmore*, the last British Governor of that colony,---express, whether the *King* had a right *only to purchase as a trustee* for the use of *Virginia*. "And when you shall have made a careful and diligent enquiry to find out the present possessors of lands within our said province, claiming to hold under grants derived from us, or our predecessors, in case any of the said grants shall appear to you to have been obtained fraudulently, and that the quit rents and other conditions, upon which the grants were made, have not been paid or complied with; or in case any person shall have taken out grants, and not seated or cultivated the lands, nor paid quit rents for the same, agreeable to the terms of their grants; in such cases, you shall give public notice to all

" all such possessors of fraudulent grants, whenever the  
 " quit rents and other stipulated conditions have not  
 " been complied with; or such as claim lands by vir-  
 " tue of their having possession of them for some time  
 " without any regular patent, and also to all such as  
 " have taken out grants, and yet have not paid quit-  
 " rents, or cultivated the lands, *that they be forthwith*  
 " prosecuted; and you are accordingly to certify the same  
 " to our Attorney General, and to direct him to proceed  
 " against such defaulters, in order to vacate and super-  
 " cede the grants, and recover possession by due course of  
 " law, of the lands they now wrongfully hold; and it is  
 " our further will and pleasure, that you do transmit  
 " unto us, by one of our principal secretaries of state,  
 " full and circumstantial accounts of all your proceed-  
 " ings in the several matters herein before mentioned,  
 " relative to quit-rents and grants of land; to the  
 " end we may give such orders and directions therein,  
 " as the nature and circumstances of the several cases  
 may particularly require."

If the King of *England* was *only as a trustee* for the  
 use of *Virginia*, &c. it was surely very impertinent in  
 the Lords Commissioners for trade and plantations, in  
 1767, by their report to the King,---to represent,  
 " that any attempts made by the legislature of *Virginia*,  
 " or any proposition offered to his Majesty's consi-  
 " deration, for the encouragement of settlements over  
 " the *Allegany Mountain*,---should be discountenanced."  
 And is it not clear also from the petition of *Arthur Lee*, Esq; and his associates, to the same King, De-  
 cember, 1768, (vide p. 68) that they did not con-  
 sider his Majesty, *as only a trustee* for the use of the  
 state of *Virginia*, otherwise would gentlemen of their  
 importance and distinguished talents, have done so  
 much violence to their understandings and the rights of

the

the colony, as to have applied for a grant of two millions and five hundred thousand acres of land, within (as Colonel *Mason* affirmed) the chartered boundaries of *Virginia* :---Besides, did not the house of burgesses of that colony in the year 1769, recognize the right of the lands bought by the King at Fort *Stanwix*, to be in the crown of *England*? Did they, by the slightest intimation, suggest, that his Majesty was *only as a trustee* for the use of the state of *Virginia*, &c. on the contrary, did they not solicit from him *further indulgences*, "in  
 "enlarging the colony's boundaries," and represent,  
 "that a great part of that valuable country lying on  
 "the *Ohio*, below the mouth of the *Great Kenhawa*,  
 "lately ceded to his Majesty by the Northern Indians,  
 "would be separated and divided from the British  
 "territory, on the upper part of *Holsten's river*, the  
 "*Great Kenhawa*, and the *Ohio*; and that the settle-  
 "ments, which may be attempted in these quarters,  
 "will, in all probability, be utterly destroyed; and  
 "that great extent of country, from the mouth of  
 "*Kenhawa* to the *Cherokee* river, &c. so very lately  
 "ceded to his Majesty, would be abandoned, &c."---  
 If the house of burgesses of *Virginia* had conceived the King had a right *only* to purchase, as a *trustee*, &c. why did they give themselves the trouble of mentioning these losses and inconveniences?---for if the novel doctrine was true, as is now set up,---the grant made at Fort *Stanwix* to the King, as soon as it had passed, from the *Six Nations*,---vested immediately in the legislature of *Virginia*.

To conclude and finally to dismiss this subject,---we shall only cite the declaration of Mr. President *Blair* and the Council of that colony in October, 1770, to the Earl of *Hillsborough*, Secretary of state to George the Third.---" We do not presume to say, to whom  
 "our

" our gracious Sovereign shall grant his vacant lands,  
 " &c. That with respect to a new colony on the back of  
 " Virginia, it is a subject of too great political import-  
 " ance for me to presume to give an opinion upon,  
 " &c. However, permit me, my Lord, to observe,  
 " that when that part of the country shall become suf-  
 " ficiently populated, it may be a wise and prudent  
 " measure."

It was urged likewise by Colonel *Mason*, that the treaty of *Lancaster*, confirmed by that of *Loggs Town*, transferred to the King the lands for the use of the state of *Virginia*. We are at a loss whether most to admire the temerity or folly of this assertion ----- Our readers will have perused the extraordinary treaties and deeds of *Lancaster* and *Loggs Town*,---and have seen that the Commissioners for *Virginia* did not found their pretensions to the lands of the *Six Nations*, lying, as they expressly said, " ON THE BORDERS OF VIRGINIA," upon charter, but asserted, that " the great King holds, by right of CONQUEST, and the BOUNDS OF THAT CONQUEST TO THE WESTWARD, IS THE GREAT SEA." ----- They also set up a claim from dereliction, and an ancient right; and observed, that part of the country (over the mountain) was altogether deserted and free for any people to enter upon, &c.----than which, nothing could be further from truth, as can be most amply proved by many persons now living.--- The real and only object of the treaty of *Lancaster*, on the part of the *Six Nations*, was to demand payment for lands in the occupation of some people of *Virginia* and *Maryland*;---and the latter colony honorably paid them to their full satisfaction;---but the Commissioners of *Virginia* told the *Six Nations*, " The dispute is not between *Virginia* and you;---it is setting up your right against the great King, under whose right, the people,

" people, " whom you complain of, are settled."--And added,--- " We will give you four hundred pounds,-- " Pennsylvania money, on condition, that you immediately make a deed recognizing the King's right to all " the lands that are, or shall be, by his Majesty's appointment, in the colony of Virginia." If our readers will be pleased to recur to page 22. 23, they will see, that this recognition related singly to the *Six Nations* having put their lands under the protection of the crown of *England*; and this appears also from the treaties held with them in 1753, by the Honorable William Fairfax at *Winchester*, and General *Washington*, (then a Major in the service of *Virginia*) at *Loggs Town*;--from the treaty held at *Carlisle*, in the month of September, and October, 1753, by Richard Peters, Isaac Norris, and Benjamin Franklin, Esqrs. Commissioners for *Pennsylvania*, with the *Six Nations*, &c.--from the royal instructions to Sir Danvers Osborne in 1753;--from the crown commissioners, their declaration to the *Six Nations* at *Albany*, in 1754, in these words,--- " for although the land is under the King's government, yet the property of selling it to any of his Majesty's subjects, having authority from him, we always consider ed as vested in you, (the *Six Nations*)---and which (country) we ever did, and do still acknowledge to belong to you, although within your father the king of Great Britain's dominion AND UNDER HIS PROTECTION."\*

That

\* The King of *England* never esteemed himself in any other light than as an ally, bound to protect the *soil*, for the *Six Nations*; and that when they submitted their country to his protection,--it gave him no title to it, as he well knew, that no engagement by one state, to guaranty another state in its possessions, could, by any mode of construction, be made to imply a right over such possessions. It is fit also to be observed, and remembered that by the above speech, the right of the *Six Nations* to the property, or dominium utile, of their country, was recognized and asserted in the strongest manner by crown commissioners from almost all the American governments assembled, and acting under the immediate authority, and in the name of the King of *England*.

That the *Six Nations* only put their lands under the protection of the King, is evident likewise from General Braddock's instructions to Sir William Johnson, in April, 1755, wherein he said, "He was come, by his Majesty's order, to destroy all the French forts, and build such others, as shall protect, and shall secure their (*the Six Nations*) lands (*westward* of the *Allegany Mountain*, and on the *Ohio*) to them, their heirs and successors for ever;"---from Sir William Johnson's speech to the *Six Nations*, May the 15th;---from the negotiations between the *Kings* of *England* and *France*, begun June the 7th, 1755, in the same year, wherein the former court affirmed, that the lands *westward* of the *Allegany Mountain* "have been longed, and as they have not been given up, OR MADE OVER TO THE ENGLISH, BELONG STILL to the *Six Nations*;"---from Sir William Johnson's speech, and General Shirely's assurances to them;---from the treaty at *Easton*, in 1758, held by the Governor of *Pennsylvania*, and Commissioners of *New Jersey* and *Pennsylvania*, with the *SIX NATIONS*, *Delawares*, &c.---from Colonel Bouquet's proclamation made at *Fort Pitt*, wherein he says, the above treaty was ratified by the King of *England*'s ministers;---from the treaty held in August, 1760, by General Monckton, when he delivered a speech from Sir Jeffery Amherst, the then Commander in Chief of his *Britannic Majesty's* forces in *North America*;---from the royal proclamation of October the 7th, 1763, for the end, among others, of restraining the subjects of *England* from settling upon lands to the *westward* of the *Allegany Mountain*; and declaring, "that the several nations and tribes of Indians, with whom we are connected, and who live UNDER OUR PROTECTION," (see also to this purpose the treaty at *Albany*, and General Braddock's instructions,

structions, &c.) "should not be molested in such parts of our dominion and territories, as not having been ceded to or purchased by us, should be reserved to them, &c."---from the treaty at *Johnson Hall*, in 1764 and 1765, held by Sir *William Johnson*, Baronet, with the *Six Nations*, for the settling of a boundary line, between their country, and that of the king of *England*, and to put "a final end to disputes between his people and you, and to do you strict justice," &c.---This was a preliminary treaty, respecting the boundary.---It will appear also, that the *Six Nations* had only put their lands under the protection of the crown of *England*, and had not sold them--from *Gen. Gage's* letter to the governor of *Pennsylvania* in 1768. From the message of this governor to the general assembly of that province, and their answer; &c.---From the speech of the *Six Nations* to the King's deputy superintendent of Indian affairs at *Fort Pitt*, in May following:---*From the president of Virginia's address*, May 31st, in the same year, to the council and house of Burgesses of that colony, wherev<sup>er</sup> he said, "That a set of men, regardless of the laws of natural justice, unmindful of the duties they owe to society, and in contempt of royal proclamations, have dared to settle themselves upon the lands, near Red Stone Creek, and Cheat River, WHICH ARE THE PROPERTY OF THE INDIANS."---And it will moreover be apparent from the treaty at *Fort Stanwix* 1768, held (in pursuance of orders, from the king of *Great Britain*) by Sir *William Johnson*, the Governor, and chief Justice of *New-Jersey*, and commissioners for *Virginia*, and *Pennsylvania*, with chiefs of the *Six Nations*, *Delawares Shawneſſe*, &c.---That the crown, at that time, purchased for the consideration of ten thousand four hundred, and sixty pounds 7*s* 3*d* sterl<sup>ing</sup>, and other considerations

tions mentioned in the grant from the *Six Nations* to the King, all the country described therein, to wit---from the *Allegany Mountain* to the river *Ohio*, &c. excepting that part, which is the property of the proprietors of *Indiana*.----Having thus by this summary train, recalled these important facts to the attention of our readers, we hope it will have been remarked by them, that not the smallest notice was taken of the *Lancaster treaty*;--And that it was not even once mentioned or referred to by any person, acting under authority of the King of England;--either by his *Generals, Superintendents of Indian affairs, or any of his Governors of provinces*, and therefore, we apprehend, we might be excused, if we passed over in silence, the assertion of *Colonel Mason*, that the *treaty of Lancaster, confirmed by that of Logg's Town, transferred the lands for the use of the state of Virginia*.----However, we trust, we shall be pardoned, if we take a cursory review of the *treaty of Logg's Town*, set up, as well as that of *Lancaster* upon the present occasion, to affect the rights of the proprietors of *Indiana*.----Either the two treaties, of *Lancaster*, and *Logg's Town*, are not good, or they do not, as we shall shew, militate in the least against that right.----With respect to the first, after what has been cited, and the observations we have made upon it, we shall only say, that if these, are not abundantly sufficient to destroy it, the treaty from its generality is certainly *void*.----It has no certain bounds, which all deeds from *Indians* have, that are made on fair, and honorable grounds:---And there never was an instance, where the *Six Nations* did not bound their grants, by natural land marks, as *Mountains, Rivers, Creeks, &c.*--or by some other plain description, which they could easily recollect, and teach to their children.----In the body of this treaty, the commissioners

of Virginia observed, we will now proceed to settle, what we are to give you for any right you have, or have had to all the lands southward and westward of Maryland and Pennsylvania;---which at any rate, is a good description for half the World; and then, they tell the Indians, that they will give them 400 £, Pennsylvania money if they will execute a deed " recognizing the Kings, right to all the lands, that are or shall be by his Majesty's appointment in the colony of Virginia."

As the King, in no instance, that we have been able to find, ever claimed a right to the lands of the Six Nations, but in consequence of purchase, and as this clause refers to their having put their lands, under the crown's protection, it would be a waste of time, to make farther remarks upon it;---for if the treaty of Lancaster had not been considered by the King, as a nullity, certainly some of the many treaties made between the years 1744 and 1768, would have at least once mentioned, or referred to it: And if the description, of all the lands, that his Majesty "had appointed, or "should appoint within the colony of Virginia" intended any thing, it meant to give the King a right to bound that colony, Wherever he pleased. What then becomes of boasted charter pretensions and boundaries.---For the words "had appointed or should appoint" cannot reasonably be understood in any other sense; than that the king possessed the undoubted right of limiting and bounding Virginia, which he afterwards did, by the Allegany Mountain, as may be seen by his royal proclamation of 1763,---by his instructions to several of his governors of that colony,---and by extending the boundaries of Vandalia, eastward to the Allegany Mountain.---If any doubts however should remain of the insufficiency of the treaty of Lancaster, the treaty of Logg's Town, and the orders given to the commiffion-

ers

ers of *Virginia* would sufficiently clear up the matter--  
The Governor of that colony in these orders, says, that  
“ as some doubts have arisen about the treaty of *Lancaster*  
“ and surmises have been spread, as if the Six Nations  
“ thought themselves imposed upon by it,”--He therefore  
directed the commissioners to have the treaty fully ex-  
plained and to “ obtain a confirmation, if possible.”---  
this shews, that as soon as the *Six Nations* understood  
the treaty, and deed made at *Lancaster*, their apprehen-  
sion of *imposition*, was fully established.---It also proves  
that the *Governor* thought so too, or why ask for the  
*confirmation* of a thing, which should be good without  
it?-----When the *half King* of the *Six Nations*,  
&c. residing upon the *Ohio*, are pressed for a re-  
cognition of the treaty of *Lancaster*, they make the  
following answers; which furnish the clearest evidence,  
that in the opinion of these *Nations*, they had been de-  
ceived; and when the commissioners produced the *Lan-*  
*caster* deed and treaty, and spoke to the *half King* &c.---  
They replied, the *Onondago* council never told them,  
that they had sold further, than the warriors road at  
the foot of the *Allegany Mountain*, and they would con-  
firm whatever they had done. On the 10th of June,  
the commissioners again strongly solicited them to give  
a deed of confirmation, and the *Indians* next day an-  
swered, “ Brother the Governor of *Virginia*, we are  
“ well acquainted, that our chief council at the treaty  
“ of *Lancaster*, confirmed a deed to you FOR A QUAN-  
“ TITY OF LAND IN *VIRGINIA*, which you have a  
“ right to;--and likewise our brother *Onas* has a right  
“ to a parcel of lands in *Pennsylvania*.---We are glad  
“ you have acquainted us with the right to those lands,  
“ and assure you, we are willing to confirm any thing  
“ our council has done, in regard to the lands; but, we  
“ never understood, before you told us yesterday, that  
“ the

" the lands then sold, were to extend farther to the sun  
 " setting, than the hill on the other side the Allegany  
 " Hill, so that we can give you no farther answer."---

The Indians then desired the Governor of Virginia  
 " would build a strong house at the forks of Monongehela  
 " to keep such goods, powder, lead, &c. in, as should  
 " be wanting;"---and " as to lands, which the Ohio  
 " company wanted to settle, the Indians only observed,  
 " that they might build a strong house or fort;"---but  
 with respect to those (*lands*) which the commissioners  
 had asked for at Monongehela, " they (the commis-  
 " sioners) imagined the Indians had given up the lands  
 " upon that river;---but they only meant, *ground suf-*  
*" ficient for the fort to stand upon*, as appeared by a  
 " private conversation with the Half King, who said,  
 " that was all that was intended."

June the 13th, the Indians remarked, " We have  
 " heard what you said, in regard to the King's design  
 " of making a settlement of his people on the waters  
 " of the river Ohio: you likewise told us that you had  
 " a deed for the lands, signed by our council at the  
 " treaty of Lancaster. We assure you of our willing-  
 " nes to agree to what our council does, or has done;  
 " but we have not the full power here, in our hands, on  
 " Ohio. We must acquaint our Council at Onondago,  
 " of the affair; and WHATEVER THEY BID US DO---  
 " WE WILL DO; and in regard to your request to build  
 " a strong house at Monongehela, you told us, it would  
 " require a settlement to support it with provisions  
 " and necessaries, and it is true; but we will take care,  
 " that there shall be no scarcity of that kind, until we  
 " can give you A FULL ANSWER."---Is it possible to  
 conceive, if the lands on the Ohio had been conveyed  
 by the treaty of Lancaster, that the Indians, who were  
 settled upon them, and especially the Half King, and  
 those

those of the *Six Nations*, should be ignorant of it. Their idea of this treaty was only, that their *chiefs* had conveyed a quantity of land on the other side (the eastern side) of the *Alleghany hills*.---And it is evident besides, from the following speech of the *commissioners* at *Logg's Town*, to the *Half King*, &c. that they had no other design, with respect to the lands upon the *Ohio*, but of taking them and the *Indians*, under the King's protection: This appears also from a part of the treaty of *Lancaster*,---the treaty at *Albany* in 1754, and General *Braddock's* instructions, &c.---The speech above alluded to, was as follows:

" Brethren,

" WE ASSURE YOU, THAT THE KING, our Father, BY PURCHASING YOUR LANDS, HAD NEVER  
 " ANY INTENTIONS OF TAKING THEM FROM YOU,  
 " but that we might live together as one people, and  
 " keep them from the French, who would be bad neighbours."

If this was not the intention of the commissioners, it is a clear acknowledgment, that the *Indians* were either deceived or defrauded, and effectually destroys the treaty. Notwithstanding they repeatedly informed the commissioners, they had no authority to confirm the treaty of *Lancaster*, and that the right was in the *Onondago* council,---yet the commissioners persisted in pressing their request, and the *Indians* continued in refusing, till taken aside by *Montour*, the interpreter, (as drunken and prostituted a person, as could have been found in all the colonies, for the purpose)---who prevailed upon the *Indians*, contrary to their reiterated assurances of want of power, to sign the deed of confirmation.---But what avails a deed for lands obtained by false suggestions, and from persons too, who declared again and again they had no authority relative to them? The

The purchase by the crown of the country on the south eastern side of the *Ohio*, in 1768, at *Fort Stanwix*, is the strongest proof of the insufficiency of the treaty of *Lancaster*;---for why buy the lands again, which it is alledged, had been purchased by that treaty? Does not the contracting with the same *Indians*, admit the ownership to be in them; and did not the King of *England* accept a grant from them at *Fort Stanwix*? wherein the *Six Nations* were at that time acknowledged,---*the true and absolute proprietors of the country.*" And did not the King's purchasing under their title, confirm the right of the *Six Nations* to the country, of which the lands so bought, were a part?---Verbal acknowledgments cost nothing, but a valuable pecuniary consideration (to wit, £ 10460 : 7 : 3 sterling, the sum paid to the grantors, and other considerations expressed in the proceedings of *Fort Stanwix*) is never given as the price of any thing, without a full conviction of the sellers absolute property in it.---If the treaty of *Lancaster* conveyed all the lands within the chartered boundary from sea to sea, as is the present doctrine in *Virginia*, why did not Mr. *Walker*, commissioner for that colony, who attended the treaty of *Fort Stanwix*, protest against a purchase, which circumscribed it's boundary?---And why did not the general assenbly of *Virginia* remonstrate to the throne, against this infraction of their charter?---but the plea of charter and immeasurable boundaries, were not thought of at that period.---All were then humble petitioners, soliciting indulgences for a more extended boundary, than was suggested by the board of trade, and " they did not " presume to say, to whom their gracious sovereign " should grant his vacant lands, ON THE BACK OF " VIRGINIA."---At all events, if the treaty of *Lancaster* was a good one, does not a subsequent treaty correct,

correct, alter, explain, or set aside a preceding one? This is the constant and invariable practice of all nations.

It was further insisted upon by Colonel *Mason*, that if the house of delegates gave up the treaty of *Lancaster*, they would furnish the neighbouring STATES with the best arguments, for a SHARE in our back lands,--therefore, it is expedient, that this treaty should be supported, as the interests of the state are concerned in it;--and the only way to prevent OTHER STATES FROM CLAIMING THE BACK LANDS would be to insist strongly on the right of pre-emption.

We shall make but a few short observations upon these curious arguments. Right or wrong, it seems, however, the treaty of *Lancaster* was to be maintained. It has been, we hope, incontrovertibly proved,--that it conveyed no property to the crown of *England*, save a small quantity of land to the eastward of the *Alleghany Mountain*;--and that, as well by various subsequent treaties and transactions, as from its generality, it was absolutely void. It is evident, we presume also, that the King did not esteem the treaty of *Lancaster*, of any the smallest validity, having, in no instance, ever referred to it, either in his negotiations with the King of *France*, or in any treaties held posterior to it with the *Six Nations*;--But Colonel *Mason* greatly depended upon the treaty of *Lancaster*, and said, as has been stated, " if it was given up, it would furnish the neighbouring states with the best arguments, for a share in our back lands."--This shews the extreme febleness of the claim, founded upon such a treaty, and that no better reasons could be assigned to vindicate it, than those which have been mentioned.

*Expediency*, that long exploded and most destructive doctrine, as applied to private property, was therefore called in aid of this reproachful transaction. As to the right

right of *pre-emption*, to prevent the other states from claiming the back lands, it cannot be necessary to say more, than if the treaty of *Lancaster* has been shewn, as we trust it has; to be of no effect, except only as to some lands to the *eastward* of the *Allegany Mountain*; a claim from such a source as *pre-emption*, is not of the least importance to the undoubted right of the *United States*, or that of the proprietors of *Indiana*.

Colonel *Mason* next insisted, that countenancing the grant, to the proprietors of *Indiana*, would exclude a fund, which might be secured to the State, by the sale.--- We admit it, and so it ought.---The estate of lord *Fairfax*, Colonel *Mason*, or any other rich person in *Virginia* would (if it was thought expedient to pass another *ex post facto law*, and declare their title void) sell for, and produce a very large fund to the treasury of *Virginia*. The last objection, made by Colonel *Mason*, which we think of sufficient importance to take notice of was, "that Doctor *Walker* subscribed the grant to the proprietors of *Indiana*, as a *bye slander*."

Doctor *Walker*, it will have been seen, was appointed under the seal of the colony of *Virginia*, a *commissioner* " TO SETTLE a boundary line between that colony, " and the colonies of *Maryland* and *Pennsylvania*, and " the several Nations of Indians concerned; &c." and for this purpose, he was required by his commission " to attend at a Congress at *Fort Stanwix*, to be held " under the *Direction* of Sir *William Johnson*, agreeable " to his Majesty's instructions: &c." And it will appear also by the journals of this treaty, that he assisted IN SETTLING the same, and joined Sir *William Johnson*, and the other *crown commissioners* in declaring to the *Six Nations*, " you now see the governor of the *Jerseys*, " the *commissioner*, on behalf of the governor of *Virginia*, and *commissioners* from *Pennsylvania*, in order

" der

"der to give you the strongest assurances, on behalf of  
 "their respective governments, OF THEIR RESOLU-  
 "TIONS, TO PAY DUE REGARD TO WHAT NOW  
 "SHALL BE ENTERED INTO." The following, are  
 some of the articles of agreement, and conditions, ap-  
 proved by the commissioners and inserted partly in the  
 treaty, and partly in the deed of cession to the King.

"That none of the provinces, or people should make  
 "any attempts on their (the Indians) lands and the  
 "boundary, under colour of ANY OLD DEEDS, or  
 "other pretences whatsoever, as the Six Nations said  
 "in many of those things, we have been imposed on, and  
 therefore we disclaim them all." "That in order to  
 "shew, we love justice, WE EXPECT, the traders,  
 "who suffered by soime of our dependants in the wars  
 "five years ago, may have a grant for the lands, we  
 "now give them down the Ohio, as a satisfaction for  
 "their losses; And, as our friend Mr. Croghan long  
 "ago, got a deed for lands from us, which may now  
 "be taken into Mr. Penn's lands, should it so happen,  
 "we request, that it may be considered, and that he  
 "may get as much from the King, some where else, as he  
 "fairly bought it. Our words are strong, and resolu-  
 "tions firm; AND WE DO EXPECT, THAT OUR  
 "REQUESTS will be complied with, in as much, as we  
 "have so generously complied with all, that has been  
 "desired."--In the deed of cession to the King for the  
 boundary, &c. it is expressly stipulated, that the other  
 grants at that time made by the Six Nations. (to wit,  
 those of the traders and Mr. Croghan) "should be deemed  
 "valid on their parts, and that his Majesty should hold the  
 "lands ceded to him," UNDER THE RESERVATIONS  
 MADE IN THE TREATY----a part of which, are  
 recited above.--Sir William Johnson (November the  
 4th 1768.) publickly, in the presence of the Indi-  
ans,

ans, Mr. Walker, and the other commissioners,  
 " STRENGTHENED RATIFIED AND CONFIRMED  
 " the boundary and ALL TRANSACTIONS NECESSARY  
 " THERETO," and then told the *Six Nations*, that,  
 " he considered their good intentions towards the tra-  
 ders, who had sustained the losses, and their desire  
 " to fulfil all their engagements, as instances of their  
 " integrity."---And immediately afterwards, address-  
 ing himself to Mr. Walker, and the other Commissioners,---Sir William observed, " That agreeable to his  
 " Majesty's instructions, he took the liberty of recom-  
 " mending it strongly to their several provinces, to  
 " enact the most effectual laws for the observance of  
 " the line; and the reliance,---he added, which the In-  
 " dians HAD ON THEIR JUSTICE, from the assurance  
 " he had given them on that head, had proved great  
 " inducements to the settlement of it."---To which Mr.  
 Walker, in behalf of *Virginia*, joined the governor of  
*Jersey* and the commissioners, in saying---" That no-  
 " thing should be wanting on their parts, to the ob-  
 " taining such security for the boundary, as was deemed  
 " necessary on their return to their respective colonies."

Can any man, or body of men, suppose, after reading these facts,---that Mr. Walker signed the deed to the traders or to Mr. Croghan, " as a bye-stander;"---but it is fit to be known, that he declared on oath, before the house of delegates of *Virginia*, at the hearing before that house, on the part of the proprietors of *Indiana*, and when he thought he had only subscribed the deed to these gentlemen, as a common witness,---that he would have done it, as Commissioner for *Virginia*, if he had been called upon to do it, in that character, as Sir William Johnson told him, the boundary line could not be got, without the grant was made to the traders. The fact however is, that Mr. Walker did subscribe the  
 grant

grant of *Indiana*, and the one to Mr. *Croghan*, in these words. " THOMAS WALKER COMMISSIONER FOR " VIRGINIA, as may be seen by the *original deeds*, " now in Philadelphia:---But enough has been observed upon this subject to shew, that the government of *Virginia* was a *party* to all the transactions of the treaty of *Fort Stanwix*, and consequently bound, and concluded by the acts of its *commissioner*, for " in public " compacts with sovereign princes, or other constitutional governors, made by their *deputies or agents*, " the law of nature (and nations) is the same as in " promises, which individuals make by proxy:---what " the deputies *do*, under authority of their public " commission, *BINDS their principals*, even though " they exceed some private instructions, which their " principals had given them."\*

Colonel *Mason* concluded his arguments against the proprietors of *Indiana*, by saying,---If we have in *this case* deviated from the rules of *strict distributive justice*, the *salus populi*,---to which I have so often referred in this house, has been the incitement, and it has been expedient for the good of the commonwealth. He then moved the house to come to certain resolutions, and June the 17th, 1779, the legislature of *Virginia* passed a law, respecting the right of *pre-emption*, and therein declared the title of the proprietors of *Indiana* to be utterly void and of no effect. See *Appendix*, No. 2.

After what we have remarked on *political expediency*, *salus populi*, and *ex post facto* laws,---we shall only add, that deviations from " strict distributive justice," in the decision of *private property* are doctrines, which have not only a direct tendency to loosen the bonds of government, to render all titles wholly insecure, and too often dependant upon the pleasure, policy, resentment,

\* See *Institutes of Natural Law*, vol. II.

ment, or caprice of a few factious men, but are invasive of the province of a jury, and fixed and learned judges;---who are "discernere per legem, quid sit justum."

Justice *Crook* well observed in the case of the illustrious *Hambden*,---that judges must *not* give their judgments according to *policy*, or *rules of state*; nor conveniences, but only according to *law*.---In fine, the doctrines of *political expediency*, &c. are too frequently pretexts to subvert the fundamental laws of a country, under the specious pretence, that the *necessity* of the case, and the *good* of government required it.---

" It is, says Mr. *Hume*, the nature of this *necessity*,  
" to abolish all *law*, and by irresistible violence to dis-  
" solve all the weaker, and more artificial ties of hu-  
" man society."---But, surely the state of *Virginia*, claiming unnumbered millions of acres, was not in so *necessitous* a condition, as to justify a replenishing of its treasury, upon the ruin of hundreds of useful citizens, poor widows and helpless orphans---To conclude:

Upon every view of the treaty of *Fort Stanwix*, the conveyances to the *King* and to the proprietors of *Indiana*,---it will be manifestly evident, that the right of these proprietors and *Mr. Croghan* stands upon the broad, and solemn basis, and is an essential part of a public treaty, *since abundantly ratified*, between two sovereign, and independant *Nations*; That the object of it in the first instance, was to procure justice for distressed subjects, who had been robbed by dependant tribes of the *Six Nations*, and to establish a point of *policy* among them, which would probably lessen such robberies in future, by authorizing a demand from their chiefs. It was not a hasty, or precipitate measure.---It was begun at a public treaty, between *Sir William Johnson*, the *Six Nations*, and by *articles of peace*,

peace, on behalf of the *Delawares*, &c. in 1764 and 1765, (The documents whereof, were duly transmitted to the crown of *England's* council office at *White-hall*, and approved by the King's secretary of state) and ended at another treaty, held at *Fort Stanwix* in 1768, by a deed to the King, one to the proprietors of *Indiana*, and another to Mr. *Croghan*.-The conveyance to the crown, was made, dependant upon the deeds to these proprietors, and Mr. *Croghan*, and the consideration expressed in the grant of *Indiana*, is the sum of Eighty five Thousand, nine Hundred, and sixteen pounds 10*s* 8*d* *New York* money, and the grantors declare therein that neither the crown of *England*, nor any persons, ever paid, nor 'should pay, any sum whatever for the lands so conveyed; And consequently, if they do not belong to Mr. *Trent*, and the other proprietors, must still belong to the *Six Nations*;--but the treaty of *Fort Stanwix*, and all transactions connected with it, were consummate, and decisive acts, because the consideration money alone (independant of the other considerations paid by the King, at the execution of the deed of cession was, as has been mentioned, Ten thousand four Hundred and sixty pounds 10*s* 3*d*. *Sterling*, and because the state of *Virginia* has actually acknowledged the treaty, as they have granted part of the lands ceded by it to the continental Army, and that having availed itself of its benefits, they are surely bound by its inconveniences, and the treaty cannot be confirmed in part, and rejected in part;--it must either be refused or acknowledged in the whole;---but the state of *Virginia* has, in the most ample manner, recognized the treaty of *Fort Stanwix*, as we hope, will appear by the following facts.

In the beginning of the year 1769, *Thomas Walker*, Esq; the same gentleman, who was commissioner for  
*Virginia*

*Virginia at the treaty of Fort Stanwix)* and General Andrew Lewis, were appointed commissioners on the part of that state, to wait on Mr. Stuart, the King's late superintendent of Indian affairs to the southward, for the purpose of endeavouring to fix a new boundary line between the Cherokees and Virginia.--In the course of their communications with Mr. Stuart, they said, " the evil would be increased by the loss of the quit-rents annually paid for these lands, and would give the Cherokees a large tract of country, that was never claimed by them, and now is the property of the crown, as Sir William Johnson actually purchased it of the Six Nations of Indians, at a very considerable expence, and took a deed of cession from them at Fort Stanwix, the 5th day of November last."

On the 7th day of December, 1769, the house of burgesses of *Virginia* promising themselves, through the good offices of their governor Lord Botetourt, that they should prevail on the King of England to annex the lands westward of the Allegany Mountain, to the dominion of *Virginia*, and that his lordship would be instructed to grant them to the people of that colony; they therefore, by a message to his lordship, desired to know, " Whether the faith of government is now engaged to confirm any orders of council for granting lands lying between the Allegany Mountain, and a line that may be run from the western termination of the North Carolina line, to the confluence of the Ohio, with the Mississippi; the terms of which orders have not been complied with; and that he would be pleased in future, to discourage all monopolies of land within the colony."

On the 8th of the same month, Lord Botetourt answered, " The faith of government is not engaged to confirm any orders of council, the terms of which have

" have not been complied with, unless in those instances, in which it shall appear they have been interrupted by unavoidable necessity, and that he will discourage all monopolies."

On the 13th of December, 1769, the house of burgesses of Virginia, in an address to Lord Botetourt, returned their thanks for the King's kind attention in approving the board of trade's report, for a more extended boundary to the westward;---express their fears, that his Majesty had not been fully acquainted with the situation of their frontiers, and entreated his lordship " to endeavour to procure for this colony such further indulgences in enlarging its boundary, as to his Majesty, in his great wisdom, may seem just and right. They at the same time represented by memorial, to his lordship, " That by establishing such a line,\* (as was proposed by the board of trade) a great part of that most valuable country lying on the Ohio, below the mouth of the Great Kenhawa, lately ceded to his Majesty by the northern Indians, would be separated and divided from the British territory, on the upper part of Holston's river, the Great Kenhawa, and the Ohio, which your memorialists humbly conceive must greatly impede, and may totally prevent the settlement of that fertile and extensive country, &c. As your memorialists have the greatest reason to fear, that the said line, if confirmed, would constantly open to the Indians and others, enemies to your Majesty, a free and easy ingress to the heart of the country on the Ohio, Holston's river, and

\* The line fixed by the lords of trade was from the intersection of Holston river (the point which would terminate the line dividing Virginia from North Carolina) to the mouth of Great Kenhawa. The House of Burgesses in a memorial to Lord Botetourt, observed, " That they had been induced to extend their views, and do humbly offer, as their opinions, that a line beginning at the western termination of the North Carolina line, and running thence to the river Ohio, would be accomplished at much less expence, than the other line proposed."

" and the great Kenhawa, whereby the settlements,  
 " which may be attempted in these quarters, will in  
 " all probability be utterly destroyed, and that great  
 " extent of country, from the mouth of the Kenhawa  
 " to the mouth of the Cherokee river, extending east-  
 " ward to the Laurel Hill, so very lately ceded to his  
 " Majesty, and to which no tribe of Indians at present  
 " set up any pretensions, will be abandoned to the Che-  
 " rokees."---See further explicit recognitions, of the  
 cession here alluded to on the part of Virginia, in  
 APPENDIX No 1.--A full acknowledgment of the trea-  
 ty at Fort Stanwix, and grant of lands to the King,  
 was also made the 9th of October 1775, at Fort Pitt,  
 by commissioners appointed by the colony of Virginia.---  
 they then spoke to the chiefs and warriors of the Six  
 Nations, Delawares, Shawneſſe, Wayandotts, and Ot-  
 awas, to this effect.

Brothers,

We have reason to believe, that great uneasiness and  
 jealousies have prevailed among you, respecting our  
 intentions of making encroachments upon your lands.  
 You must be all sensible, the lands on this side the Ohio,  
 as far as the Cherokee river, were purchased at the treaty  
 of Fort Stanwix, by Sir William Johnson, for the King  
 of England, who has since sold them to his children on this  
 continent, which they now expect to enjoy in peace.---  
 To whom did he sell them?---Did he do it to the go-  
 vernment of Virginia, or to the inhabitants of that or  
 of any other state in confederacy, and for what  
 price, and when?

A just and easy solution can be given, to these que-  
 stions, by answering,---That Dr. Franklin, and his  
 associates, were the *only* persons to whom, the King  
 sold a part of the lands granted to him, as may be seen  
 in

\* This is an error, for the purchase, made by the King at Fort Stanwix,  
 extended eastward, from the river Ohio to the east side of the Allegany  
 Mountain.

in APPENDIX, No. 1.—Besides these acknowledgments by *Virginia*, the *Congress* of the *United States* recognized the treaty of *Fort Stanwix*, at a conference held at *Fort Pitt*, in 1775, as appears by the speech of *General Morris*, and others, their commissioners, and the answer of *Round Head*, a chief of the *Six Nations*: In short, the treaty of *Fort Stanwix* is universally acknowledged, as a valid and binding act, in full force; and that if set aside, would produce the greatest confusion in many of the states; for, by the cession made at that time to the crown, a boundary line, as has been often mentioned, was established between the *Indians* and *Americans*, from the mouth of the *Cherokee* river to *Canada* creek, where it empties itself into *Wood* creek.

Treaties between nations ought to be held sacred and inviolable. The general rights of mankind are interested in their conservation, and if made, as the treaty at *Fort Stanwix* was, to obtain justice for distressed subjects, and stop the effusion of blood, are to be considered among the greatest of human blessings; and consequently, there is the highest obligation upon the *Congress* of the *United States* to see, without farther delay, that the public faith is strictly maintained by the performance of the conditions of this treaty.—Reason, policy and justice, all call aloud for it, as the *Six Nations* would have an unquestionable right to the whole of their cession to the King, if those parts of the treaty, respecting *Indiana* and Mr. *Croghan* are not accomplished.—It is, therefore, most confidently hoped and expected, that *Congress*, who are the true guardians of public liberty, justice and national honour, will vindicate and support the treaty of *Fort Stanwix*, and the property of these proprietors and Mr. *Croghan*; and more especially, as the *United States* in *Congress* assembled, have solemnly pledged themselves to all the inhabitants

inhabitants of these states, by declaring, " That as  
 " they are in duty bound, on the one hand, to preserve  
 " inviolate the rights of the several States, so on the  
 " other, they will always be careful to provide, that the  
 " justice due to these States, does not interfere with the  
 " justice, which may be due to individuals." Where-  
 fore the proprietors of Indiana did, on the 11th of  
 September, 1779, and the 30th of November, 1780,  
 by their agent, Colonel George Morgan, present two  
 memorials to Congress, not doubting but they should  
 speedily find the happy effect of so just and laudable  
 a resolution, and the following are parts of these me-  
 morials:

The memorialists recited the cause of their grant, and  
 the manner of obtaining it from the *Six Nations*, &c.  
 and represented among other things, that they found some  
 of the acts of the state of *Virginia* (directing the sale  
 of lands to commence in October next, for the parti-  
 cular benefit of that state) seem intended to prevent,  
 and defeat the interposition of Congress on a matter of  
 the utmost national consequence to all these states, and  
 subversive of every rule of justice, in the determination  
 of private property, for the following among other  
 reasons :

Because they apprehended, that the order of [the  
 privy] council, which they referred to, was a suffi-  
 cient separation of the lands in question, (Appendix.  
 No. 1) from the jurisdiction of *Virginia*, which state  
 could only claim the same under the crown; and that  
 if any doubt could arise therein, the *United States*, as  
 successors to the sovereignty, are the only judges; but  
 that *Virginia* has constituted herself *a judge in her own*  
*cause*, and for her own emolument, and began to  
 seize and set up for sale the property of the traders, so  
 fairly obtained, and for so great a consideration.

Because

Because the said tract of land (*Indiana*) thus obtained for so valuable a consideration, and with every circumstance of notoriety and authority, that can give validity to any grant, was afterwards (as being included within the bounds of *Vandalia*) by an order of the King of Great Britain in council, before the declaration of the independency of these states, separated from the dominion (which in right of the crown) *Virginia* claimed over it, and notification was given to the *Six Nations*, &c. that the said tract of *Vandalia* (including *Indiana*) aforesaid, was to be erected into a separate government, under the sovereignty of the said King; and therefore the memorialists observed:--That they are advised, the said tract of country cannot now remain subject to the jurisdiction of *Virginia*, or of any particular state, but of the *United States* in Congress assembled, in whom the sovereignty is now vested.

And because the proceedings of *Virginia* seem calculated to invalidate a solemn treaty made with independent nations, and by all those states approved, &c. and it is hoped, the *wisdom, policy and justice* of these states will never suffer such a spectacle to be exhibited to the world, as " A HEATHEN PEOPLE SEEKING TO DO A DELIBERATE AND SOLEMN ACT OF JUSTICE WHILE A CHRISTIAN STATE STRIVES TO PREVENT THEM."--Nor let it (subjoin the memorialists) once be made a question, whether sovereign and free nations of *Indians* may not recompence an injury or satisfy a debt by a sale of part of their own lands, but that the debt and injury are both to be raised up against them at a future day.

And lastly, the memorialists prayed, that the Honorable Congress would appoint a day for hearing the parties interested, that so the question of right might be

be fully explained and considered, and an impartial and just determination had in the premises.

*This* is what the Proprietors of *Indiana* are now most anxiously waiting for, and that the state of *Virginia* would come forth, and shew publicly what sort of title it pretends to claim under.

In fine, they only wish and request, that the sovereign power of the *United States* would, without further delay, adopt and exercise that excellent and comprehensive assurance to the people, “*Nulli negabimus, AUT DIFFEREMUS RECTUM AUT JUSTICIAM.*”

F I N F S.

A P P E N-

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## APPENDIX, No. I.

WHILE the matters (mentioned in pages 141,  
142, 143, 144) were transacting in *Virginia*,  
a company was formed in *London*, consisting of many  
gentlemen, residing both in *England*, and *America*, for  
the purpose of endeavouring to buy from the *King*,  
part of the lands ceded to him, by the treaty, and  
deed of *Fort Stanwix*, and the honorable *Thomas Walpole*, Doctor *Benjamin Franklin*, and Messieurs  
*John Sergeant*, and *Samuel Wharton*, were appointed  
a committee to manage their application.---In June  
1769, These gentlemen presented a petition to his  
*Britannic Majesty* for the purchase of two Millions and  
four Hundred Thousand acres of these lands, and their  
petition being referred by the *King* in council to the  
Earl of *Hillborough* and the other lords commissioners  
for trade and plantations, Mr. *Walpole* and his associates  
attended their lordships, in December 1769,  
when the Earl of *Hillborough*, recommended to them  
to contract, if possible, with the lords of the treasury,  
for such part of the purchase from the *Six Nations*,  
lying on the river *Ohio*, as would be sufficient in extent  
to form a separate government upon. The Earl of *Hill-  
borough*, offered to go immediately to the treasury, and  
know their lordship's opinion upon the subject, and  
the petitioners expressing their approbation, his lord-  
ship went, and reported, that the lords of the treasury,  
would be glad to receive the gentlemen's proposals.---  
Accordingly, on the 4th of January 1770, a memo-  
rial was presented, proposing to buy from the *King*,  
the tract of land hereafter described, and to pay the  
sum

sum of £ 10460: 7s: 3d. sterling, and a quit rent of two Shillings like money for every hundred acres of cultivable land within the said tract;---The quit rent not to commence 'till after the expiration of twenty years.---Their lordships took into consideration the memorial and paper, containing a description of the lands applied for, and unanimously *agreed to accept* the price, and quit rent offered.

On the 8th of May 1770, Mr. *Walpole* and his associates, presented a petition to King in council, praying that a grant for the lands might be made to them.---On the 25th of the same Month, the lords of the committee of council referred this petition to the lords commissioners for trade and plantations, and on the 15th of July following, the Earl of *Hillsborough* desired the attendance of Messrs. *Walpole*, *Franklin*, *Sargent* and *Wharton* at the board of trade, when he informed them, that as there were, perhaps, some settlers from *Virginia* seated on part of the tract under consideration, he was of opinion, that that colony should be acquainted with the contract made with the treasury; and therefore the report of the Lords of Trade would be delayed only until it was known, whether *Virginia* had any thing to say upon the subject; but, in the mean time, he had the King's express commands to repeat, in the strongest manner, his Majesty's former orders, forbidding the governor of *Virginia* to pass warrants for, or suffer any surveys or settlements to be made over the *Allegany Mountain*, and especially on any of the lands, which the company had contracted for.

On the 25th of February, 1771, Mr. *Walpole* was informed by a note from the Earl of *Hillsborough*, that he had directed copies to be made, and sent him, of such parts of the letter he had received from *Virginia*, as related to his and his associates application for lands  
on

on the *Ohio*; and his lordship observed, he should be very glad to concur in reporting upon that application, as soon as a full board of trade could be had. The letter here alluded to, was from the Honourable Mr. *Nelson*, president of his Majesty's council of *Virginia*, and dated the 18th of October 1770, the president wrote.---- that on the evening of that day, his lordship's letter of the 20th of July to the governor, was delivered to him;-- And as it contained matter of great variety and importance, *it had been read in council*, and together with the several papers inclosed in it, had been *maturely* considered, and that " he then troubled his lordship " with their, as well as his own opinion on the sub- " ject of them."---He acknowledged the propriety, and justice of his lordship, and my lords commissioners of the treasury, in delaying to report in favour of Mr. *Walpole*, and his associates for a grant of lands, **ON THE BACK OF VIRGINIA**, until the country should be made acquainted with it, and their reasons, if they had any, in objection should be heared.---He then mentioned the affair of the late *Ohio* company, governor *Dunwiddie's* proclamation, and promise of two Hundred thousand acres of land to the officers and soldiers of *Virginia*, who had served in the former war between *France* and *England*, and supposed, that the same quantity would be allowed to *all* the other officers and soldiers upon the continent.---He also observed, *besides these*, we have been told, (tho' we have not had an authentic copy of the treaty at *Fort Stanwix*,) that the *Indians* made it an express condition in the deed of cession to his Majesty, that a quantity of land should be granted to *Colonel Croghan* and to the traders, as a recompence to them for the injuries, and damages sustained from the *Indians*.---- These he said were to the northwards;---- And at the same time remarked, that " In

## 152 APPENDIX, No. I.

" In all the other grants, I do not find, that any steps  
 " have been taken, towards surveying and seating  
 " them;----of course, they are, or will become lapsed,  
 " except in the two to John Lewis for 800,000 acres  
 " called the *loyal company* and to James Patten and  
 " others for 100,000 acres."\* ----

On these lands, the president remarked, " there  
 " are many hundred families settled. The late war,  
 " and the prohibition by proclamation, have been the  
 " causes, that these lands have not been more fully  
 " peopled, which I have reason to think, will be ef-  
 " fected soon after leave is GIVEN to grant patents for  
 " such parts as are settled. These one million seven  
 " hundred thousand acres, which I have taken notice  
 " of in all," (the quantity the president and council  
 apprehended, the above mentioned grants to the *Old*  
*Ohio Company*, the Officers, Colonel Croghan, the trad-  
 ers, &c. would amount to,--" I SUPPOSE WILL TAKE  
 " PLACE OF ALL NEW ADVENTURERS.---We do not  
 " presume to say, to whom our gracious Sovereign  
 " shall grant HIS VACANT LANDS; nor do I set my-  
 " self up as an opponent to Mr. Walpole and his asso-  
 " ciates.

\* Before the president of the council wrote the above letter to the Earl of Hillyborongh, he desired John Blair, jun. Esq; clerk of the council, to report to him the situation of all orders of council for lands; and the following is the report made by him to the president:

" In obedience to the commands of His Honor the President, I have  
 " examined the council journals, and find, that no grant has been made  
 " to any person whatever, since the said 12th of February, 1755, nor even  
 " since the 27th of August, 1754, of a larger quantity of land lying to the  
 " westward of the said mountains, than 1000 acres; and but few grants at  
 " all of any of those Lands, as will more particularly appear by the foregoing  
 " List of all the grants or orders of council, which have passed, located as  
 " above mentioned." [See the address of the House of Burgesses of Vir-  
 " ginia, &c. in page 105.] " And I also find, that no grants of those lands  
 " in any quantity whatever, have been made since the 7th of October,  
 " 1763, being the date of the royal proclamation forbidding the seating of  
 " that country, but that the petition of the *Loyal Company* for a renewal  
 " of their grant of 800,000 acres was rejected in 1763, as being contrary to  
 " the royal instructions, respecting the quantity to be granted to any one  
 " person. JOHN BLAIR, Jun. Cl. Coun."

" ciates. All that I can, consistently with my duty,  
" hope for, is, that all prior rights, whether *equitable*  
" or legal, may be preserved and protected." The  
president further mentioned, "That with respect to the  
establishment of a new colony ON THE BACK OF  
VIRGINIA, it is a subject of too great political im-  
portance for me to presume to give an opinion upon.  
---However permit me, my Lord, to observe, that  
when that part of the country shall become suffi-  
ciently populated, it may be a wise and prudent  
measure."

On the first of July, 1772, the Lords of the Committee of Council represented to the King, that it was their opinion a grant should be made to Mr. Walpole and his associates; and on the 14th of August, the King approved thereof, and ordered the Lords of Trade to report to him in Council, if any, and what terms of settlement and cultivation, and what restrictions and reservations were necessary to be inserted in the grant to these gentlemen, exclusive of the money AGREED to be paid by them, as a consideration for the tract of land in question, with a clause to save and preserve to the respective occupiers, all prior claims within its limits, whether derived under *equitable* or legal titles: And also to prepare a plan for establishing a new government on the said lands, together with an estimate of the expence, and the ways and means by which the same should be defrayed by Mr. Walpole and his associates. The same day the King in Council, by a further order, gave the necessary directions to the Lords Commissioners for trade and plantations, for carrying the above into execution; and that the Earl of Dartmouth should direct his Majesty's Superintendant for Indian affairs, to apprise the Chiefs of the Six Nations and their Confederates, of his Majesty's intentions to form

a settlement upon the lands, *which he purchased of them* in 1768. Accordingly the Earl of Dartmouth sent instructions to Sir William Johnson, the Superintendent for Indian affairs; and in obedience thereto, the Six Nations were informed, and much approved of the settlement; and the Deputy Agent residing on the river Ohio, in conformity to the orders given him, did, on the 3d of April, 1773, assemble the Chiefs of the Western Tribes at Scioto, and in the King's name made the same communication to them, as Sir William Johnson had done to the Northern Nations; with which they also expressed their hearty approbation, and desired the King might be assured, it would give them the highest satisfaction to take the person appointed to govern them, by the hand, and afford him all the assistance in their power.

On the 6th of May, 1773, the Earl of Dartmouth, and the other Lords of Trade, reported to the King, that as the measures, which his Majesty had been pleased to adopt, in regard to his possessions on the Ohio, had, they supposed, been principally founded on the necessity there was of introducing some regular form of government in a country *incapable* of participating the advantages arising from the civil institution of *Virginia*, they had made that the first object of their attention; and accordingly submitted the form and constitution of the new colony, which they named *Vandalia*, to his Majesty, and at the same time, and in the same report,---they observed, "That pursuant to his Majesty's order in Council of the 14th day of August, 1772, so much, and such part of the land included within the new colony, as is herein after mentioned, be granted to the Honorable Thomas Walpole, Samuel Wharton, and other their associates, that is to say, all the lands included within the following lines, viz.---

" Beginning

" Beginning at the south side of the river *Ohio*, opposite to the mouth of *Scioto*, then southerly through the pass of the *Ouassioto* Mountains, to the south side of the said Mountains; thence along the side of the said Mountains north easterly to the fork the *Great Ken-hawa*, made by the junction of *Green Briar River* and *New River*, thence along the said *Green Briar River*, on the easterly side of the same, unto the head or termination of the north easterly branch thereof; thence easterly to the *Allegany Mountains*, thence along the said *Allegany Mountains* to Lord Fairfax's line; thence along the same to the spring head of the north branch of the river *Potomack*; thence along the western boundary line of the province of *Maryland*, to the southern boundary line of the province of *Pennsylvania*; thence along the said boundary line of the province of *Pennsylvania* to the end thereof; thence along the western boundary line of the said province of *Pennsylvania*, until the same shall strike the river *Ohio*, thence down the said river *Ohio*, to the place of beginning.

" That the grant should be made on the following conditions and reservations, that is to say;

" That the grantees should, upon the day of the date of the grant, pay into the receipt of his said Majesty's exchequer, the sum of Ten thousand four hundred and fifty pounds, seven shillings and three pence, pursuant to the agreement made with his Majesty's treasury, on the 4th of January, 1770.

" That all prior claims to the said lands, within the limits of the said grant, whether derived under equitable or legal titles, should be saved and reserved to the respective occupiers and possessors, with the exception however to all occupancy of what nature or kind whatsoever, taken or made subsequent to the agreement for the purchase of the said grant made with the lords of the Treasury, on the 4th of January, 1770, by Messrs.

*Walpole,*

*Walpole, Wharton, Sargent and Franklin*, on behalf of themselves and their associates; and provided also, that the grant of 200,000 acres to be made to the officers of the regiment raised and paid by the colony of *Virginia* in 1754, in consequence of the engagement made to them, be located in one contiguous tract."---"But the Lords Commissioners for trade and plantations, humbly craved leave to represent to his Majesty, that they had omitted any restriction upon the proprietors, from settling to the west of the line agreed upon in October, 1770,---that restriction having, as they conceived, become altogether unnecessary. The district reserved to his Majesty being far distant from any settlement,---should be bounded on the south west by the river *Louisa* or *Catawba River*, which is very far west of the utmost extent of the tract to be granted in propriety." \*

On the 19th day of May, 1773, his Britannic Majesty, by an order in Council of that day, referred the preceding report of the Earl of Dartmouth, and the other Lords of Trade, to the Lords of the Council.

On the 3d day of July, 1773, their Lordships of the Council, by an order under the Privy Seal, directed to his Majesty's Attorney and Solicitor General, were pleased to order them to prepare, and lay before them a proper instrument to be passed under the Great Seal of Great Britain, containing a grant to the Hon. Thomas Walpole, Esq; and others his associates, of the lands aforesaid, inserting in the same, the conditions and reservations proposed in the report of the Lords Commissioners for trade and plantations, a copy whereof was annexed to the said orders.---And on the 16th of July, 1773, the King's Attorney and Solicitor General made a report to the Lords of the Council, and after due consideration of the same, their Lordships were pleased to issue the following decisive order. AT

\* The boundaries of the colony of *Vandalia*, extend westerly to *Louisa* or *Catawba*, or *Cuttawa*, river.

A P P E N D I X, No. I. 157

AT THE COUNCIL CHAMBER, WHITEHALL,  
the 28th day of October, 1773.  
BY THE RIGHT HONORABLE THE LORDS COMMIT-  
TEE OF COUNCIL FOR PLANTATION AFFAIRS.

WHEREAS there was this day laid before their Lordships, a report from his Majesty's Attorney and Solicitor General, upon taking into consideration an order of this Committee, bearing date the 3d of July last, whereby they were directed to prepare a draught of a proper instrument to be passed under the Great Seal of *Great Britain*, containing a grant to the Honorable *Thomas Walpole*, Esq; and others his associates, of certain lands on the river *Ohio*, in *North America*, inserting in the said draught, the conditions and reservations proposed in a report of the Lords Commissioners for trade and plantations, bearing date the 6th of May, 1773, a copy whereof was annexed to the said order.---In which report of his Majesty's said Attorney and Solicitor General, it is humbly submitted, that the granting the said lands in joint-tenancy, will probably render it impossible to make any under grants with complete titles: That the description of the Thing to be granted, is much more loose and uncertain, than hath been usual in royal grants, or than hath been practised, so far as they know, in any but the grants which were made for the erection of colonies, to the first adventurers in *America*, while it was wholly unknown; and further, that the quit-rents will not be so well secured to his Majesty, if they are not reserved from the lands under granted, instead of being made payable by the grantees. The Lords of the Committee this day took the said report into consideration, and are hereby pleased to ORDER, that his Majesty's Attorney and Solicitor General, do prepare and lay before this Committee, the draught of a proper instrument, to be passed under the Great

*Great Seal of Great Britain*, containing a grant to the Honorable Thomas Walpole, Samuel Wharton, Benjamin Franklin and John Sargent, Esqrs. and their heirs and assigns, of the lands prayed for by their memorial; (*they being the persons who, in behalf of themselves and their associates, contracted for the said lands, with the Lords Commissioners of his Majesty's treasury*) inserting in the said draught the conditions and reservations proposed in the said report of the Lords Commissioners for trade and plantations, dated the 6th of May, 1773, excepting that part of the said report, which proposes, that the grantees do pay the quit rents to his Majesty, his heirs and successors; and in respect thereof, the Lords of the Committee are hereby pleased to order, that the said quit rents be reserved from the lands, which shall be leased, sold, demised, planted or settled, whether the said lands be settled and planted by the said grantees themselves, or by their heirs or assigns, or under tenants; the said payment of the quit rents not to commence until the expiration of twenty years after such leasing, demising, planting or settling respectively. And, for the better ascertaining the bounds of the said tract of land to be granted as aforesaid, their Lordships are hereby pleased to transmit the map\* of the tract of land prayed for by the memorialists and TO ORDER, that his Majesty's Attorney and Solicitor General do INSERT the bounds in the same manner as they are described and ascertained in the said report of the Lords Commissioners for trade and plantations, dated the 6th of May, 1773.

While these solemn and ulterior measures were taking in England, the Earl of Dunmore, Governor of Virginia, presumed in violation of his instructions to pass several

\* The map here mentioned, is annexed to the order of the privy council under the great seal thereof, now in Philadelphia.

several orders of Council for lands, to the westward of the Allegany Mountain; and upon a representation there-of being made to the Earl of Dartmouth, Secretary of State for America, his Lordship, by the King's express command, wrote to Lord Dunmore, as follows:

“ Whitehall, October the 5th, 1774.

“ My Lord,

“ AS your Lordship says, that you was intirely ignorant of the claim of Mr. Walpole and his associates, otherwise than by common report, I think fit to inclose your Lordship a copy of Lord Hillsborough's letter to Lord Botetourt, of the 31st of July, 1770, the receipt of which was acknowledged by Mr. President Nelson, a few days after Lord Botetourt's death, and appears by his answer to it, to have been laid before the Council. That board therefore, could not be ignorant of what had passed here on Mr. Walpole's application, nor of the King's express commands, contained in Lord Hillsborough's letter, *that no land whatever should be granted beyond the limits of the Royal proclamation of 1763, until the King's further pleasure was signified*, and I have only to observe, that it must have been a very extraordinary neglect in them, not to have informed your Lordship of that letter, *and these orders*.

Signed Dartmouth.”

In the spring of the year 1775, the draught of a royal grant for the lands agreed for by Mr. Walpole and his associates, being prepared, agreeable to the last order of the Privy Council, and having undergone the examination of Lord Camden, and others of the proprietors, the execution thereof was suspended, by desire of the Lord President, until hostilities had ceased, which had then begun between Great Britain and the United Colonies;—and in the beginning of the month of March, 1781, a memorial signed by the Honorable

Benjamin

*Benjamin Franklin* and *Samuel Wharton*, (two of the persons to whom the royal grant in question was to have been made by the *British* government) was presented to the Honorable the *United States* in Congress assembled,---setting forth all the proceedings, which had been had in the premises, and that they (the memorialists) and their associates had incurred a great loss of time, (particularly *Samuel Wharton*, in an absence of more than eight years from his family and affairs) and expended a very large sum of money, in conducting the business through the offices and departments of the *British* government, &c. whereby together with the before recited *contract*, they acquired an equitable title to the lands in question, notwithstanding the instrument for conveying the same was not compleated, by reason of the foregoing hostilities.'

Dr. *Franklin* and Mr. *Wharton* also represented, that as the *United States* had succeeded to the sovereignty of the territory, which they had contracted for, they confided, that they wou'd think it just and reasonable to consider the said territory, as subject to such *contracts* and *dispositions* as were made concerning it, while it confessedly belonged to the *British* crown, and that they might not suffer so great an injury by a change of sovereignty, as to be deprived of their equitable right to the said lands; and lastly they prayed, that the lands might be granted to them, and to their heirs and assigns (in trust for themselves and associates) upon the terms and conditions of their contract, and of the order of the *privy council* (*under the great seal thereof*) or upon such other terms, as may be convenient to the interests of the *United States*, and not injurious to them.

#### *Observations.*

IT will have been seen in the foregoing pages, that *Virginia*, in the fullest manner, recognized the treaty of

of *Fort Stanwix*:---That she was a humble suitor to the King, for a part of the country ceded by it to the crown, and endeavoured to extend her government over the *Alleghany Mountain*,---but by a royal proclamation and repeated instructions, was forbidden:---That she had *early* and *official* notice of the *contract* of Mr. *Walpole* and associates, and gave such answer as appears in the preceding pages, but never presumed to lay any claim to the ceded lands, nor object to the grant of *Indiana*.---On the contrary, supposed, that this grant and the one to Mr. *Croghan*, "would take place of all new adventurers," and declared, that she did not presume to say, "to whom his most gracious Majesty should grant his vacant lands, nor set herself up as an opponent to Mr. *Walpole* and his associates;---all that was hoped for, was, that all rights, whether equitable or legal, should be preserved and protected."---And the same just regard was also shewn by the *privy council of England* and the *Lords for trade, &c.* towards the equitable rights of all persons, for spots of land within the tract to be granted to Mr. *Walpole* and his associates.

If the proceedings, in the case of Messrs. *Franklin, Wharton, Trent* and their associates, are considered, and the great expence and loss of time incurred in the prosecution of their *contract*, and that nothing prevented their obtaining a grant for the same, under the great seal of *England*, but the change of sovereignty from the King thereof to the *United States of America*. Must not all impartial persons concur in saying, that these gentlemen have the fairest claim upon the justice of *Congress*, as they are the equitable purchasers and owners of the lands in question? For their *contract* is acknowledged by all departments of the *British government*, under the seal of the *privy council*.---This fact

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cannot be denied, as public and indisputable authorities are ready to be produced to prove it.---The glorious revolution of these states was not made to destroy, but among other things, to protect private property; and as the grant to Messrs. Franklin, &c. would have passed under the British government,---can it be supposed, that the Congress of America, so famed for wisdom, fortitude and liberality, will be less sensible to the influence of justice, than the King of England was?---Forbid it virtue;---forbid it equity:---The mind revolts at an idea so injurious to the national honour and probity of the United States,---who abounded in too much wisdom not to know;---that after all the proceedings had upon the contract so recognized by the privy council, &c.---if there had been any denial of justice in England, the court of chancery of that kingdom, upon the application of Messrs. Franklin, &c. would have decreed a *specific performance* of the agreement on the part of the crown. This the most celebrated judges and lawyers of that kingdom, have uniformly declared, as "IT IS A KNOWN AND ESTABLISHED RULE IN EQUITY, THAT FROM THE TIME OF THE CONTRACT, the Vendor is a TRUSTEE for the Vendee, 'till the CONVEYANCE IS EXECUTED, and if the vendor should afterwards sell the same lands to another, having notice of the precedent contract,---Equity still TRANSFERS the TRUST, and the first vendee may, in such case, bring his bill against the second vendee for a specific performance."\*

## APPEN-

\* Cases in Equity, vol. 2. printed in 1769.

## A P P E N D I X, No. 2.

*In the House of Delegates, of Virginia June 9, 1779.*  
*Resolved,*

**T**HAT the commonwealth of *Virginia* hath the exclusive right of *pre-emption* from the *Indians*, of all the lands within the limits of its own chartered territory, as declared by the act and constitution of government, in the year 1776, that no person or persons whatever have, or ever had, a right to purchase any lands within the same, from any *Indian nation*, except only persons duly authorized to make such purchases, on the public account, formerly for the use and benefit of the colony and lately of the commonwealth, AND THAT SUCH EXCLUSIVE RIGHT OF PRE-EMPTION WILL, AND OUGHT TO BE MAINTAINED BY THIS Commonwealth, TO THE UTMOST OF ITS POWER.

*Resolved,*

That every purchase of lands heretofore made by the King of Great Britain, from any *Indian nation* or nations, within the before mentioned limits, doth and ought to endure for ever, to and for the use and benefit of this commonwealth, and to and for no other use, or purpose whatsoever.

*Resolved, therefore,*

That the deed from the Six United Nations of Indians, bearing date on the third day of November, 1768, for certain lands between the Allegany Mountains and the River Ohio, above the mouth of the Little Kenhawa Creek, to and for the use and benefit of a certain William Trent, gentleman, in his own right, and as attorney for sundry persons in the said deed named, as well as all other deeds, which have been or shall be made, by any Indian or Indians, for lands within the limits of the charter and territory of *Virginia* as aforesaid,

said, to or for the use or benefit of any private person or persons, shall be, and the same are hereby declared utterly void, and of no effect: Which being separately put, was carried in the affirmative, without alteration or amendment, by a great majority. The division being 50 and 28.

June the 17th, 1779, the assembly passed the following law respecting the right of *pre-emption*.

To remove and prevent all doubts concerning purchases of lands from the *Indian* natives, Be it declared by the general assembly, that this commonwealth hath the *exclusive* right of *pre-emption* from the *Indians*, of all lands within the limits of its own chartered territory, as described by the act and constitution of government in the year 1776---That no person or persons whatsoever have, or ever had, a right to purchase any lands within the same, from any *Indian* nation, except only persons duly authorized to make such purchases on the public account, formerly for the use and benefit of the colony, and lately of the commonwealth, AND THAT SUCH EXCLUSIVE RIGHT OF PRE-EMPTION WILL, AND OUGHT TO BE MAINTAINED BY THIS COMMONWEALTH, TO THE UTMOST OF ITS POWER. And be it further declared and enacted, that every purchase of lands heretofore made by or on behalf of the crown of *England*, or of *Great Britain*, from any *Indian* nation or nations, within the before mentioned limits, doth and ought to enure for ever, to and for the use and benefit of the commonwealth, and to and for no other use or purpose whatsoever; and that all sales and deeds, which have been, or shall be made by any *Indian* or *Indians*, or by any *Indian* nation or nations, for lands within the said limits, to or for the separate use of any person or persons whatsoever, shall be, and the same are hereby declared utterly void, and of no effect.

The Reader is requested to correct the following *Errata*.

Page 1 Line 4

- |     |    |  |   |
|-----|----|--|---|
| 10  | 9  | }  | for that continent, read <i>this continent.</i> |
| 12  | 5  |  |   |
| 26  | 30 | }  | for or, read <i>nor.</i>                        |
| 27  | 20 |  |   |
| 21  | 31 | for uninterrupted, read <i>uninterrupted.</i>  |   |
| 22  | 14 | for were as follow, read <i>was as follows.</i>  |   |
| 24  | 19 | for or, read <i>nor.</i>   |   |
| 34  | 21 | for our claim, read <i>of the British claim.</i>   |   |
| 45  | 15 | for reed, read <i>reed.</i>  |   |
| 47  | 17 | for country, read <i>country.</i>  |   |
| 48  | 12 | for Richard Willard, read <i>Richard Willard.</i>  |   |
| 70  | 24 | for Benjamin Taffer, read <i>Benjamin Taffer.</i>  |   |
| 71  | 25 | for Benjamin Barnes, read <i>Abraham Barnes.</i>   |   |
| 74  | 35 | for countenance, read <i>countenance.</i>  |   |
| 75  | 30 | for aud, read <i>and.</i>  |   |
| 91  | 11 | for William Brer, read <i>William Brent.</i>   |   |
| 94  | 33 | for William Frauklin, read <i>William Franklin.</i>  |   |
| 109 | 24 | for bonnds, read <i>bounds.</i>  |   |
| 127 | 25 | for thes, read <i>this.</i>  |   |
| 144 | 7  | for Excellency, read <i>Excellency.</i>  |   |
| 150 | 34 | for supseribed, read <i>subscribed.</i>  |   |
| 155 | 6  | for have arisen, read <i>has arisen.</i>   |   |
| 160 | 18 | for Shirely, read <i>Shirley.</i>  |   |
|     | 9  | for be abandoned to the Cherokees, read these words with a<br>star of reference at the end of the word <i>Cherokees.</i> * |   |
|     | 31 | for Mr. Walpole, read <i>Mr. Walpole.</i>  |   |
|     | 5  | for to the fork the Great Kenhawa, read <i>to the fork of</i><br><i>the Great Kenhawa.</i>                                 |   |
|     | 21 | for territory, read <i>territory.</i>  |   |

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